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THE ANTITHESIS OF NATURE AND ART, AND ROUSSEAU'S REJECTION OF THE THEORY OF NATURAL RIGHTS

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In spite of all that has been written about Rousseau's political theory, he is still generally regarded as a proponent of the theory of natural rights. His political writings are thought to contain an exposition of that theory, and they are believed to have been highly influential in spreading it. Thus Professor Crane Brinton, writing in the *Encyclopædia of the Social Sciences*, says that although Rousseau added little to the actual dogmas of the theory of natural rights, "he did much to give it proselyting strength" and he "gave the doctrine of natural rights, hitherto endowed with the solid and effective but imaginatively limited prestige of nature as reality, as uniformity, and as the "golden mean," the additional prestige of nature as mystic strength, as *magna mater*."[1] But it has already been shown that Rousseau's political doctrine was neither well-known nor influential in France until the doctrine of natural rights lost its vogue and the authoritarian doctrines of Robespierre and the extremists of 1793 superseded it.[2] As for England and America, if we may take Thomas Paine's political theory as characteristic of the theory of natural rights as it flourished in the English-speaking countries during the last quarter of the eighteenth century, what similarity is there between the *Rights of Man* and *Le contrat social?* Indeed it would be hard to see how Rousseau's political writings could have propagated the theory of natural rights, since they either explicitly reject it or ignore it. It is the purpose of this

[1] *S. v.* "Natural rights."

[2] See David Williams, "The Influence of Rousseau on Political Opinion, 1760–95," *English Historical Review*, Vol. 17, pp. 414–430 (1933).

paper to point out that Rousseau did reject the doctrine of natural rights decisively, and to show how he came to do so.

The process by which Rousseau came to reject the theory of natural rights is recorded in the *Discours sur l'origine de l'inégalité* (1755), and it is the same process by which he reasoned himself into a rejection of "nature" as the norm in his scale of ethical and political values.[3] In order to understand this, it is necessary first to consider what the conception of the state of nature was as it appeared usually in the theory of natural rights, and what its connection with natural rights was. Then we must see how Rousseau changed the state of nature so that it was no longer possible for him to found civil rights on natural rights. Locke's version of the theory of natural rights may be accepted as the best representative for our purposes. According to Locke's *Two Treatises of Government* (1690), all men are in a state of nature who are not joined together in a civil society. They have their natural rights, but they are not able to enjoy them, because might can overcome right. Consequently, they form a civil society, making a contract among themselves that they will give up one of their natural rights, namely, the right to enforce the law of nature, in return for which the state will procure them the enjoyment of the others. Now in this there is no antithesis of nature and art. The state of nature is distinct from civil society, but there is no contrast between a primitive state of nature and civilized society. Locke explicitly points out that modern states are in a state of nature with respect to each other, and it is clear that for him the state of nature is essentially a juristic rather than a cultural state.

When Rousseau undertook his search into the origins of social inequality, this was the conception of the state of nature which he found prevalent. It is true that other writers' conceptions of the state of nature implied the antithesis of nature and art to a considerable extent. Both Hobbes's state of nature and that of Puffendorf were partly cultural conceptions.[4] Still, they were essentially juristic states of nature. They were designed as the basis of a political theory and not as a description of what the state of nature

[3] For a discussion of Rousseau's rejection of nature as the norm in the *Second Discourse* and the anti-primitivistic strains in that essay, see A. O. Lovejoy, "The Supposed Primitivism of Rousseau's Discourse on Inequality," *Modern Philology*, Vol. 21, pp. 165–186 (1923).

[4] For Puffendorf's conception of the state of nature, see his *Of the Law of Nature and Nations*, trans. by Basil Kennett (4th ed., London, 1729), Bk. II, ch. 2.

must have been culturally. Nor did they represent a thoroughgoing application of the antithesis of nature and art. But for Rousseau, nature was always completely antithetic to art. He was of two minds as to which he regarded as the better, but he never wavered from the idea that they are antithetic to each other. When he considered the juristic state of nature described by such authors as Hobbes, Puffendorf, and Locke, he found much in them that he could not regard as truly natural. The trouble with such writers, he asserts in the foreword to the *Second Discourse*, is that they do not go far enough back in their search for the state of nature. They include, among other things, various psychological characteristics of man, such as cultivated reason and artificial passions, which belong to civilized life. The true state of nature was the actual condition in which man originally was, when he owed nothing whatever to his own efforts or to art. It was the state of man when he came straight from the hands of nature, when he possessed none of those attributes which he acquired in any way as a part of his later development. Consequently, if we are to see man as he originally was in the state of nature, we must strip off all the accretions of time and art.[5] When we do this, we find that man is merely a brutish animal. His only care is self-preservation. His existence is purely sensual; he can perceive and feel, but he cannot think. He lives alone, and having no one to talk to, he cannot speak. He is entirely free from all passions. His chief characteristics are *pesanteur* and *stupidité*. Needless to say, he knows nothing of even the most rudimentary technical arts. He eats acorns and sleeps beneath the oak.[6] This indeed is pure nature without any art; the antithesis is complete.

Ironically enough, Rousseau has always been reputed to have regarded this state of nature as the norm. There is indeed a certain amount of justification for the opinion. He did regard the state of nature as best in regard to bodily health, and he expressed this belief with all the force of his rhetoric.[7] Moreover, he never wearied of contrasting primitive and natural man with civilized man, for the purpose of indicting the evils of society. Insatiable desires, headstrong passions, excessive poverty, enervating wealth, crowded and unhealthy living conditions, and the horrors of war are brought into relief against the quiet, peaceful, and healthy life

[5] *Oeuvres* (ed. Hachette, Paris, 1909–13), Vol. 1, pp. 78, 79, 82, 83.
[6] *Ibid.*, p. 85. [7] *Ibid.*, p. 108.

of natural man.[8] The inference that Rousseau is urging a return to that primitive plane of existence is obvious.

But such an inference is invalid in the face of his explicit statements. At the end of Note IX of the *Second Discourse*, after an eloquent and bitter denunciation of civil society, he proposes the question himself. His answer is that men cannot return to their original peace and simplicity, once their bodies have become dependent on the comforts of civilization and their hearts have stirred with the passions of social life. Therefore, he asserts, all those who respect law and order, instituted both by divine and human authority, will unite in obedience to the laws, service to their fellows, and honor to deserving princes. Although such complacency toward revealed religion and political authority may be a mere gesture of feigned compliance with ecclesiastical and civil authority, other passages from other works do not corroborate such an interpretation. In his *Réponse à M. Bordes* (1752), he had already denied that he believed man could gain by abandoning learning or overturning society.[9] In the *Préface de Narcisse* (1753), he holds that once a people is corrupted, whether the arts and sciences are responsible or not, they should be preserved and fostered. Although they cannot make bad men good, they will increase the general stock of happiness, and they will at least encourage the appearance of virtue, which is better than rampant vice.[10] Substantially the same point is made in the third dialogue of *Rousseau juge de Jean-Jacques* (1780).[11] There is in all these passages a comprehensive, but negative, repudiation of the original state of nature as man's best state. By implication, it would be the best state for man if it were not for the fact that it is unattainable. As it is, it cannot be the norm for civilized man.

Complementary to this negative repudiation of nature in the *Second Discourse*, so largely vitiated by nostalgia for man's primitive state, is a positive repudiation. This is implicit in Rousseau's description of the state of nature itself. As both M. Lanson and Professor Lovejoy have pointed out, Rousseau could not have believed that such brutish stupidity was the best that man could hope for.[12] His identification of the orang-outangs of travel litera-

[8] *Ibid.*, pp. 133–137 and *passim*.

[9] *Ibid.*, p. 65. This and the two following references I owe to C. E. Vaughan's *Political Writings of Jean-Jacques Rousseau* (Cambridge, 1915), Vol. 1, p. 13.

[10] *Ibid.*, Vol. 5, pp. 108–109. [11] *Ibid.*, Vol. 9, p. 287.

[12] Lovejoy, p. 168; and G. Lanson, "L'Unité de la Pensée de Rousseau," *Annales de la société Jean-Jacques Rousseau*, Vol. 8, p. 13 (1912).

ture with primitive man in Note X of the *Second Discourse* in itself constitutes a *reductio ad absurdum* of the inference that Rousseau considered the state of nature as man's best state. What takes the question out of the sphere of speculation is Rousseau's own designation of what he did consider man's best state. This was the stage in which most contemporary savages are, separated from the state of nature by many ages and by important developments, "déjà loin du premier état de nature."[13] His reasons for choosing this primitive but *unnatural* condition as man's happiest lay in his conception of human nature. According to his psychological theory, man has two attributes, which more than anything else have molded his history. The first of these is his *faculté de se perfectionner*, which compels him, with every means at his disposal, to ameliorate his lot.[14] The arts and sciences are an inevitable consequence of this quality. The second is man's *amour propre*, the pride which he takes in feeling superior to his fellows and in partaking of their approval.[15] The result of this passion is a disposition to quarrel, with the consequence that peaceful society is impossible. Social man is characterized by *méchanceté*, which arises from his *amour propre*. As Professor Lovejoy has made clear, Rousseau's choice of the state which he considered to be man's best was determined by balancing these factors against one another. The state of the savage is one in which the *faculté de se perfectionner* has removed him from the brute stupidity of the state of nature, and also one in which he has not yet reached the climax of the unnatural evils arising from his *amour propre*. It represents a compromise, "un juste milieu entre l'indolence de l'état primitif et la pétulante activité de notre amour-propre."[16] The fact that this happiest state is a relatively primitive state is beside the point. The important thing is that it is not the state of nature, but a subsequent stage of man's development, far removed in time. Moreover, the implication of Rousseau's reason for choosing this mean should not be overlooked. If it were not for man's *amour propre*, there would be no fault to find with a much higher stage of culture and social organization.

From the point of view of political theory, the *Second Discourse* implies a complete desertion of nature as the norm. The desertion was forced upon Rousseau, so to speak, by his unshakable presupposition that the state of nature was man's historically original

[13] *Oeuvres*, Vol. 1, p. 109. [14] *Ibid.*, p. 90.
[15] *Ibid.*, Note XV, pp. 149–150. [16] *Ibid.*, p. 110

condition, a condition opposed to art in every way. For us, the important thing in Rousseau's rejection of the state of nature as the normative state was that it meant a rejection of natural rights at the same time. It was easy for Locke to introduce natural rights into civil society from his state of nature, but Rousseau could do nothing of the sort. A state of nature in which solitary man could not speak, and much less reason, was not fitted to be the state in which the natural law of reason, and rights determined by that law, could exist. In stripping man of all the accretions of time and art, Rousseau had placed a chasm between the state of nature and natural rights, on one side, and civil society and civil rights on the other. Since this chasm could not be bridged, he was compelled to search for some new criterion for political right and wrong to replace the discarded natural rights.

Although Rousseau reasoned himself into rejection of the state of nature as man's best state, he still might have retained natural rights as a basis for his political theory by divorcing them from the state of nature and giving the term *natural* some other interpretation. He could have followed Locke in defining natural rights as the rights belonging to man in virtue of being self-evident to man's reason, and then omitted the state of nature entirely.[17] There was, however, another strain in his thought which made this impossible. This was his adherence to what may be called the anti-rationalistic and egoistic tradition of Hobbes, La Rochefoucauld, and Mandeville. We have already met this strain in the *Second Discourse* in the rôle played by man's *amour propre*. Its clearest expression is to be found in the early version of the *Contrat social*, which Rousseau wrote about 1754–55, and which he left in manuscript at his death.[18] In addition, this document is of significance to us because it contains a more emphatic expression of his desertion of nature than the *Second Discourse*.

Indeed, the second chapter of the first draft of the *Contrat social* expresses Rousseau's desertion of nature directly in terms of nature and art. In the *Second Discourse*, the desertion was reluctant, and the approval of art was not general, but limited to a particular savage stage of development. Here he flatly repudiates

[17] An excellent example of this development of the theory of natural rights is to be found in Adam Ferguson's *Principles of Moral and Political Science* (London, 1792).

[18] For the dating of the first draft of the *Contrat social*, see Vaughan, *loc. cit.*, Vol. 1, p. 284, and p. 445, note 1; and Lovejoy, *loc. cit.*, p. 184, note 1.

nature as the norm, and, what is more, states that there was no period in the past when man was happy. In the state of nature, he says, man was too ignorant to be happy, and when he emerged from ignorance, his innocence and peace had already vanished:

> Ainsi, la douce voix de la nature n'est plus pour nous un guide infaillible, ni l'indépendance, que nous avons reçue d'elle, un état désirable; la paix et l'innocence nous ont échappé pour jamais, avant que nous en eussions goûté les délices. Insensible aux stupides hommes des premiers temps, échappée aux hommes éclairés des temps postérieurs, l'heureuse vie de l'âge d'or fut toujours un état étranger à la race humaine, ou pour l'avoir méconnu quand elle en pouvait jouir, ou pour l'avoir perdu quand elle aurait pu le connaître.[19]

Even if perfect independence and liberty, Rousseau continues, had been joined in the past to man's original innocence, they would have constituted an evil by hindering the development of man's most excellent faculties. Man would have lived isolated, his understanding dark, and his heart knowing neither goodness nor morality. His only happiness would have consisted in his ignorance of his own misery.

This astonishing repudiation of nature and of the primitivistic strain in his thought is followed by two paragraphs which stand deleted in the manuscript. Nevertheless, they may be legitimately considered, since they introduce Rousseau's attack on rationalism which is continued in the following paragraphs and which is inherent in his later political writings. The attack is on what may be called the psychological aspect of the appeal to the law of nature and natural rights. If the law of nature as applied to civil society means anything, he says, it means the law of reason. But the law of reason is useless in civil society, because reason, itself completely controlled by the passions, can never control human conduct. Reason can teach each man his particular good, but the good of the individual is never the same as the good of the community. It follows that the laws of society cannot be based on a rationalistic interpretation of human nature. The laws of society must be laws against human nature, a yoke curbing human selfishness, not a code imposed by the reason of the individual.[20] What is this but a rejection of the fundamental assumption underlying the theory of natural rights?

There are, then, two kinds of nature which Rousseau rejects—

[19] Vaughan, Vol. 1, pp. 448–449. [20] *Ibid.*, p. 450.

human nature as it was in the beginning, because it is irretrievably lost, and human nature as it is now, because it is essentially selfish. But if nature in neither sense is to be man's guide, where can man find a basis for political right? Rousseau directs his answer to this question to an imaginary adversary, whom Diderot had first invented in the article "Droit naturel" in the *Encyclopédie*. Diderot had defended the theory of natural rights as the only tenable argument against the tradition of egoistic ethics championed by his "violent interlocuteur" and such writers as Hobbes. Rousseau denies the contention, and in doing so expresses his most outspoken approval of art and disapproval of the theory of natural rights. There is no help to be found in looking back to a state of nature, he says, nor can any reliance be placed on natural law. Let us then forget the past and look to the future, where new efforts of man may solve the difficulties in which he is involved. Let us show this imaginary opponent that perfected art can remedy the mistakes man has made in the past:

> Que notre violent interlocuteur juge lui-même du succès. Montrons-lui, dans l'art perfectionné, la réparation des maux que l'art commencé fit à la nature; montrons-lui toute la misère de l'état qu'il croyait solide. Qu'il voie dans une meilleure constitution de choses le prix des bonnes actions, le châtiment des mauvaises et l'accord aimable de la justice et du bonheur.[21]

In Rousseau's political theory, perfected art is to take the place of nature and natural rights.

But what are the principles of this perfected art? Rousseau answers this question in substantially the same way in the remainder of the early draft of the *Contrat social*, in his article "Économie politique" in the fifth volume of the *Encyclopédie* (1755), and in the published *Contrat social* (1762). Since the "Économie politique" is the earliest published expression of Rousseau's political theory proper, let us consider it. The article begins with a contrast of the two kinds of economy, domestic and political. Some authors, Rousseau says, have found close similarities between the family and the state, but in reality there are none. The family is natural, and the authority of the father is natural. The state is artificial, being founded on convention, and the authority of the magistrate is based on man-made laws. Whoever accepts the analogy between the family and the state adopts an erroneous conception of political government, which in practice will lead to

[21] *Ibid.*, p. 454.

disaster. The voice of nature is the best guide for the father of a family, but a false one for the statesman. The father will protect the welfare of his family if he obeys his instincts (which is what Rousseau means by the voice of nature in this case), but the statesman has no instinctive interest in the welfare of his people. On the contrary, if he follows the passions of his heart, he will inevitably betray his people.[22] Again we find that Rousseau's anti-rationalistic and egoistic psychology have dominated his political theory. But the pessimistic inferences from man's *amour propre* concerning the value of a society developed beyond savagery, which we met in the *Second Discourse*, are no longer to be found. Instead, Rousseau uses his almost Hobbesian interpretation of human nature as the basis of a political theory in which natural rights are conspicuously absent.

Having disposed of the false analogy between the family and the state, Rousseau proceeds to outline a theory of government based on a far worse analogy, that of the human body and the state. The sovereign power is the head, the laws and customs the brain, and so on. The analogy in itself would be insignificant if it were not that Rousseau uses it to introduce his fundamental conception *le moi commun* together with *la volonté générale*. In so far as these terms have any meaning, they owe it to this analogy. *Le moi commun*, "the corporate self," as Vaughan translates it,[23] is the state considered as an organism, a living being capable of having a single will in the same way as a human being has a will. This will is *la volonté générale*, but what it is aside from this analogy, or how its dictates are found out in practice, Rousseau never tells us.

The significant thing about *la volonté générale* for us is that it takes the place of natural rights. In the first place, it is the standard of justice. Whatever is in conformity with its dictates is just, and whatever is against it is unjust. Secondly, *la volonté générale* is the norm for political action. For it unerringly wills what is best for *le moi commun*, and this, the good of the people, is the purpose of government. Rousseau's political theory is essentially utilitarian, if that term may be used in a broad sense. "Le pouvoir souverain, qui n'a d'autre objet que le bien commun, n'a d'autres bornes que celles de l'utilité publique bien entendue."[24] *La volonté*

[22] *Oeuvres*, Vol. 3, pp. 278–280. [23] *Loc. cit.*, Vol. 1, p. 230 *et al.*
[24] *Oeuvres*, Vol. 2, p. 278; cf. pp. 280 and 283.

générale is Rousseau's way of saying expediency, and the good of the people as determined by *la volonté générale* replaces natural rights.

The *Contrat social* as published in 1762 adds nothing fundamentally new to the doctrine of the first draft and the "Économie politique," although it leaves out the important second chapter of the first draft. The rejection of the appeal to nature and natural rights as the norm, however, is asserted at the very beginning. Society, says Rousseau, is based on a sacred right, but not one which comes from nature: "Mais l'ordre social est un droit sacré qui sert de base à tous les autres. Cependant ce droit ne vient point de la nature; il est donc fondé sur des conventions."[25] The rest of the book concerns this conventional right.

The provisions of the contract, by which society is formed, mark the break with the state of nature. The terms are summed up thus: "l'alienation totale de chaque associé avec tous ses droits à toute la communauté."[26] By giving up all rights, no one loses anything, for every one receives an equal status from the state in return. If anything were kept back, the whole contract would fall to the ground. "L'état de nature subsisterait, et l'association deviendrait nécessairement tyrannique ou vaine."[27] By Rousseau's method, however, a new equality is obtained, superior to that of the state of nature:

> C'est qu'au lieu de détruire l'égalité naturelle le pacte fondamental substitue, au contraire, une égalité morale et légitime à ce que la nature avait pu mettre d'inégalité physique entre les hommes; et que, pouvant être inégaux en force ou en génie, ils deviennent tous égaux par convention et de droit.[28]

In the *Second Discourse*, Rousseau had maintained that social inequality increases in proportion with the degree of social organization. Here he states the opposite view; the inequalities of nature are to be corrected by artificial society. For political theory, he has completely emancipated himself from the belief that nature, as opposed to art, is the norm. And, as we have seen, this emancipation resulted from his steadfast adherence to the assumption that nature and art are completely antithetic.

The contract is merely the starting point of Rousseau's political theory in the *Contrat social*. As in the "Économie politique," its

[25] *Ibid.*, pp. 306–307. [26] *Ibid.*, p. 313.
[27] *Ibid.* [28] *Ibid.*, pp. 317–318.

essence lies in *le moi commun* and *la volonté générale.* It is not necessary here to repeat the main outlines, but the strain of utilitarianism which is apparent throughout the development of his theory is worth noting. In the first paragraph of the book, he announces his intention of finding the common ground between justice and expediency, between right and interest: "Je tâcherai d'allier toujours, dans cette recherche, ce que le droit permet avec ce que l'intérêt prescrit, afin que la justice et l'utilité ne se trouvent point divisées."[29] The distinction between right and expediency is one which Rousseau never relinquished, and it accounts for much of the vagueness of his doctrine in the *Contrat social.* His phraseology is always that of *a priori* or divine justice, but his doctrine points toward, and at times reaches, an ethical pragmatism. In common with all contractualists, he makes much of the utilitarian *motif* in his discussion of the causes leading men to join together in a compact.[30] More significant is his emphasis on utility in his discussion of what comes after the contract has been made. At this point the general will begins to function, and it is directed solely toward *le bien commun.*[31] The general will is "toujours droite et tend toujours à l'utilité publique."[32] It is also utility which determines the scope of the power of the state over the individual. The sovereign, according to Rousseau, may make any claim upon the subject, provided the claim is in the interest of the whole.[33] Finally, Rousseau specifically makes allowance for the variations in policy necessary to utilitarian principles by recognizing the different needs of different peoples.[34] The laws must fit the people whom they are to govern. In the early manuscript version, he makes this point more sharply than in the final version: "Quoique je traite ici du Droit et non des convenances, je ne puis m'empêcher de jeter en passant quelques coups d'oeil sur celles qui sont indispensable dans toute bonne institution."[35] The distinction between rights and expediency remains, but it is an equivocal distinction. Rousseau bases right on the general will, and he makes the general will, in turn, direct political action in accordance with the public welfare. In emphasizing the distinction, he is carrying over a pattern belonging to the theory of natural rights and natural law which he had already rejected.

[29] *Ibid.*, p. 306. [30] *Ibid.*, pp. 307, 314–315, and 322–323.
[31] *Ibid.*, p. 318. [32] *Ibid.*, p. 320. [33] *Ibid.*, p. 321.
[34] *Ibid.*, pp. 329–330. [35] Vaughan, Vol. 1, p. 483.

Thus Rousseau's political theory is a compromise. Partly because of his belief that the appeal to natural rights went hand in hand with the appeal to nature and a state of nature, and partly because of his anti-rationalistic and egoistic interpretation of human nature, he was forced to abandon the theory of natural rights in spite of his inclination toward an *a priori* foundation of right. He wished to keep at least the appearances of a higher sanction for political right than mere expediency; so he developed the rather mystical conception of *le moi commun* and *la volonté générale*. Furthermore, he neglected the implications of his reversal of the relative values of nature and art. If he had placed complete confidence in art after his rejection of nature, he would have developed a full-fledged utilitarianism, perhaps something like that of Bentham. A high evaluation of art as opposed to nature implies a faith in man's reason and in his achievements, which is a necessary ingredient of a thoroughgoing utilitarianism. But Rousseau was not ready to discard his distrust of human powers and of art to that extent. This was a development which belonged chiefly to a subsequent climate of opinion. In the change from eighteenth-century natural rights to nineteenth-century utilitarianism, however, Rousseau went more than half way. He discarded the old completely, and what he put in its place clearly intimated the new.

TREATY-MAKING PROCEDURE IN THE UNITED KINGDOM*

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I. FULL POWERS

The power to conclude and ratify treaties in the United Kingdom is one of the few remaining prerogatives of the crown. We may search in vain for constitutional laws, provisions, and decrees specifying the required formalities incident to the negotiation, conclusion, and ratification of treaties by Great Britain, because these matters are not governed by any act of Parliament or by any written regulations. British constitutional law on these points has not been embodied in statute and rests upon the common law alone. Thus there is no express definition of the treaty-making power and no reference to the authority by whom the treaty-making power may be exercised. Nevertheless, it may be said that under British constitutional law, which in this instance is common law, the authority to make treaties is vested absolutely in the crown as the unquestioned prerogative of sovereignty.[1] In practice, the king ex-

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[1] Under the British constitution, there are two kinds of executive power. There are special powers conferred by Parliament upon the king in council and on secretaries of state or other executive officers. There is also the king's old undefined prerogative power in so far as it has not been abrogated or limited by statutes or tacitly abandoned by long disuse. Prerogative in English law means "the powers, privileges, and immunities peculiar to the king." Prerogative powers of the king are the powers "original and inherent in the kingship, as distinct from powers conferred on him by statute." They are "the ancient customary powers of the crown." See W. R. Anson, *The Law and Custom of the Constitution* (4th ed., by A. Berriedale Keith, Oxford, 1935), Vol. 2, Pt. 1, p. 17. The source of the king's executive power in the realm of treaty-making is still the ancient common-law prerogative. It has been maintained by Judge Atherley-Jones, however, that: "There is no custom or usage of the constitution to support the view that the sole power of making treaties *resides in the prerogative of the crown, subject to certain defined exceptions.* . . . The treaty-making prerogative of the crown was a usurpation of individual monarchs; on the decay of monarchism the prerogative has been arrogated by a council with no responsibility to the sovereign, and with only *ex post facto* responsibility to the Parliament which is its master." *Transactions of the Grotius Society*, Vol. 4, 1919, pp. 95, 105, 108.

ercises this prerogative and acts in the sphere of treaty-making only upon the advice of his responsible ministers.[2]

The first formal step in the procedure of making a treaty upon any given subject is the appointment of a plenipotentiary (or plenipotentiaries) to act on behalf of His Majesty. For this purpose, an instrument known as a "full power" is prepared. By this instrument, His Majesty "names, makes, constitutes, and appoints" some person as "our undoubted Commissioner, Procurator, and Plenipotentiary *in respect of Our United Kingdom of Great Britain and Northern Ireland*" and gives to him "all manner of Power and Authority to treat, adjust, and conclude" (with the minister vested with similar power and authority by the foreign state) a treaty for the purpose mentioned and "to sign for Us, and in Our name, in respect of Our United Kingdom of Great Britain and Northern Ireland, everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample manner and form, and with equal force and efficacy, as We Ourselves could do, if personally present." The full power thus indicates very clearly that the plenipotentiary represents His Majesty only in respect of the United Kingdom of Great Britain and Northern Ireland, and that he signs the treaty for His Majesty in this capacity alone. To this instrument appointing the plenipotentiary and empowering him to treat with the foreign plenipotentiary, the Great Seal of the Realm is affixed on the authority of a royal warrant under His Majesty's sign manual and signet, and countersigned by the secretary of state for foreign affairs, on whose responsibility the entire proceedings are carried out.

When the foreign secretary has decided to advise His Majesty to grant a full power to some person to negotiate and conclude a treaty upon a certain subject, his first step is to instruct the treaty department of the Foreign Office to prepare the necessary docu-

[2] See United States, Department of State, *The Treaty-Making Power in Various States* (Washington, 1919), pp. 23–25. See also Ralph Arnold, *Treaty-Making Procedure* (London, 1933), p. 38. This valuable little volume, compiled by Mr. Arnold on behalf of the Information Department of the Royal Institute of International Affairs, is a comparative study of the methods of treaty-making obtaining in different states, including all the members of the British Commonwealth except Canada. Gerald E. H. Palmer, *Consultation and Coöperation in the British Commonwealth* (London, 1934), pp. 142–150, deals with the practice of negotiation and ratification of treaties in the several Dominions, Canada included.

ments. These consist of: (1) Full Power, and (2) the Warrant for Affixing the Great Seal to the Full Power. These two documents, as prepared by the treaty department, are presented to His Majesty by the secretary of state for foreign affairs. The submission of these documents in itself constitutes the advice of the secretary of state to the king to grant the full power in question. After His Majesty has signed the documents, they are returned to the Foreign Office, where the secretary of state for foreign affairs (or in his absence any other secretary of state) countersigns the warrant (but not the full power) and seals it with the signet of his office. The documents are then transmitted to the Lord Chancellor, the Keeper of the Great Seal, who, being so instructed by the warrant, causes the Great Seal to be affixed to the full power. Once the warrant and full power have been signed by the king, the secretary of state, in countersigning the Warrant, and the Lord Chancellor, in causing the Great Seal to be affixed, are acting, not as advisers, but as servants of the king carrying out His Majesty's commands.

When the signature of a treaty is to take place in a foreign capital, full powers for signature in respect to the United Kingdom are ordinarily issued to the British diplomatic representative at that capital. His Majesty's representatives abroad receive a separate full power for each treaty to be signed in respect of the United Kingdom except where a subsidiary instrument on the same subject is to be signed at or about the same time, in which case the one full power suffices for the signature of both instruments. Although by the terms of the existing form of full power issued from the Foreign Office, the person therein named is authorized both to negotiate and conclude the treaty, in actual practice the treaty negotiations may be virtually completed, or in certain cases the treaty may, indeed, be in final form before the full power is issued. At conferences where the delegates are required to produce full powers before taking part in the discussions, the United Kingdom delegates are provided with full powers at the outset. Ordinarily, however, full powers are required only when the time comes for signature. Where a full power is granted for the purpose of carrying on negotiations, the same full power is regarded as sufficient for signature of the treaty when it reaches its final form. In certain cases, a treaty may be prepared by the Foreign Office and sent to one of His Majesty's regularly accredited representatives abroad

with the instruction that he sign the treaty along with a representative appointed by the foreign power for that purpose. The amount of discretion entrusted to the plenipotentiary may vary in each case. He is, however, always in constant communication with the Foreign Office, and it may be found necessary to alter his instructions on certain points as the negotiations proceed. In any event, a United Kingdom plenipotentiary would not, under ordinary circumstances, proceed to the signature of any treaty until the text had been approved by the Foreign Office in final form. When the negotiations have been concluded, the points of agreement are embodied in a draft treaty which, after approval by the Foreign Office, is signed in duplicate by the plenipotentiaries representing their respective countries and is sealed by these plenipotentiaries with their own seals.

II. RATIFICATION

Every treaty signed under full powers from His Majesty is signed "subject if necessary to Our Ratification."[3] In fact, practically all treaties so concluded are made subject to ratification. It may be provided that, "This treaty shall be ratified," or that, "The present treaty shall be ratified, and the ratifications shall be exchanged at London [or elsewhere] as soon as possible."[4] Now and then an instrument to which His Majesty is a party does not require ratification and comes into force on the date of signature.[5] Usually, however, a treaty contains a provision that it shall be ratified and that ratifications shall be exchanged at some future

[3] This limitation on the binding effect of the signature is embodied in all full powers. There are instances in the history of other countries in which signature makes ratification obligatory. The full power carried by the Spanish plenipotentiary who signed the Treaty of Amity, Settlement, and Limits with the United States, February 22, 1819, contained an authorization by the king of Spain "to conclude and sign a treaty of amity, . . . obliging ourselves, as we do hereby oblige ourselves and promise, on the faith and word of a King, to approve, ratify, and fulfill, and to cause to be inviolably observed and fulfilled, whatsoever may be stipulated and signed by you. . . . " Hunter Miller, *Treaties and Other International Acts of the United States of America* (Washington, 1933), Vol. 3, pp. 3, 35.

[4] Extradition Treaty between His Majesty, in respect of the United Kingdom, and the President of the United States of America, December 22, 1931. United Kingdom, *Treaty Series*, 1935, No. 18, Cmd. 4928.

[5] See, for example, the Convention between His Majesty in respect of the United Kingdom and the President of Finland regarding the Suppression of Illicit Importation of Alcoholic Liquors into Finland, October 3, 1933. *Ibid.*, 1933, No. 36, Cmd. 4436. Article 5 provided: "The present Convention shall come into force on the day of signature."

date and at some specified place. In such event, neither party is bound by the treaty until ratification has been effected. Otherwise, the treaty may take effect in accordance with the terms specified in its text.

No rule of law in the United Kingdom requires that a treaty be approved by Parliament prior to ratification. His Majesty can constitutionally ratify any treaty without the consent of Parliament.[6] On certain occasions, however, the British Government deems it desirable to submit a treaty to Parliament, and parliamentary approval is secured before ratification is effected. All of the treaties of peace following the World War, for example, were approved by Parliament at Westminster and also by the parliaments of the Dominions prior to their ratification by His Majesty.[7] In the several Dominions, both houses of the parliaments adopted resolutions approving the treaties. Thereupon a Dominion order in council was made stating that the governor-general in council "is pleased to order and doth hereby order that His Majesty the King be humbly moved to approve, accept, con-

[6] One possible exception is a treaty by which a cession of territory is made. "It is the practice, and probably by now may be regarded as a binding constitutional convention, that treaties involving the cession of British territory (apart from the Indian Empire) require the approval of Parliament given by statute." E. C. S. Wade and G. Godfrey Phillips, *Constitutional Law* (London, 1933), p. 206. See Arnold D. McNair, "When Do British Treaties Involve Legislation?," *B.Y.I.L.*, Vol. 9 (1928), p. 63. Professor McNair says that "as a matter of strict law" treaties involving cessions of territory do not require legislation, but that "as a matter of constitutional convention a series of modern precedents makes it extremely unlikely that in future any cession will take place without statutory authority." This subject is discussed at length in Samuel B Crandall, *Treaties; Their Making and Enforcement* (New York, 1904), pp. 160–167; *ibid.* (2d ed., Washington, 1916), p. 292. The practice of consulting Parliament in regard to the cession of territory has varied widely from time to time. However, "the tendency has been undoubtedly in the direction of obtaining the sanction of Parliament more regularly, and not merely by an address to the Crown, or a vote signifying approval, but making the treaty or convention conditional on the approval of Parliament and by the embodiment of the provisions relating to the cession in the schedule of a statute. . . . There seems, however, to be a consensus of opinion that at the close of a war, and for the purpose of concluding a peace, the prerogative of cession is wider than it would be in the time of peace. . . . It may now be regarded as settled that cessions of territory should be approved by Parliament, as in the case of the cession to Italy of Jubaland in 1927, and of the transfer of certain areas to Perak in the Dindings Agreement in 1934." Anson, *op. cit.*, Vol. 2, Pt. 2, pp. 137, 139, 140.

[7] The Act of Parliament, the Treaty of Peace Act, 9 & 10 Geo. 5, c. 33, empowering His Majesty to carry into effect the Treaty of Versailles was enacted into law July 31, 1919. The king signed the instrument of ratification of the treaty October 8, 1919.

firm and ratify the said Treaty of Peace."[8] While in the case of the Dominions specific resolutions were adopted approving the treaties, followed by orders in council advising His Majesty to ratify, the approval of the Parliament at Westminster assumed a different form. The act of Parliament was passed prior to ratification, but it did not purport to approve the treaties in specific terms. Nor did the act attempt to ratify them or empower His Majesty to do so. Instead, it merely empowered His Majesty to take the necessary steps to carry out those provisions of the treaties which required legislative authority.[9] By following this procedure and this form, the Government and Parliament gave tacit recognition to the principle that His Majesty may constitutionally ratify any treaty without the consent of Parliament.

A definite stipulation may be included in the text of a treaty

[8] This is quoted from the Canadian order in council of September 12, 1919, moving His Majesty to ratify the Treaty of Versailles, printed in Canadian *Sessional Papers*, 1919, No. 41 j, p. 13. The Dominions were urged by the secretary of state for the colonies to register their approval of the treaties by resolutions of both houses—instead of in the form of a bill on lines of that submitted to Parliament at Westminster—and later enact such legislation on lines of the British act as might be necessary to give effect to the treaties. Resolutions were preferred in order to expedite approval.

[9] The Treaty of Peace Act, 1919, 9 & 10 Geo. 5, c. 33, empowers His Majesty to give effect to the Treaty of Versailles in the following manner:

"*WHEREAS*, at Versailles, on the twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace (including a protocol annexed thereto), a copy of which has been laid before each House of Parliament, was signed on behalf of His Majesty, and it is expedient that His Majesty should have power to do all such things as may be proper and expedient for giving effect to the said Treaty:

"Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

"1.—(1) His Majesty may make such appointments, establish such offices, make such Orders in Council, and do such things as appear to him to be necessary for carrying out the said Treaty, and for giving effect to any of the provisions of the said Treaty. . . .

"(3) Any expenses incurred in carrying out the said Treaty shall be defrayed out of moneys provided by Parliament."

The Treaties of Peace (Austria and Bulgaria) Act, 1920, 10 Geo. 5, c. 6, authorizes His Majesty to give effect to the Treaty of St. Germain and the Treaty of Neuilly, and the Treaty of Peace (Hungary) Act, 1921, 11 & 12 Geo. 5, c. 11, empowers His Majesty to carry into effect the Treaty of Trianon—the language in each case being identical with that used in the Treaty of Peace Act, 1919. The Treaty of Peace (Turkey) Act, 1924, 14 Geo. 5, c. 7, was enacted for carrying into effect the Treaty of Lausanne and the conventions, protocols, and declarations (eleven in all) connected with the treaty. The form of the act is identical with the earlier treaty acts.

under which ratification is subject to the approval of Parliament. In this case, the treaty in question is submitted to Parliament for its approval, and parliamentary approval is given in very specific terms before ratification is effected by His Majesty.[10] In practice, the text of every treaty of the United Kingdom which is subject to ratification is laid before Parliament for a period of twenty-one days before ratification. During this time, any member of Parliament who so desires has opportunity to raise questions concerning the treaty, even though the approval of neither house of Parliament is necessary before its ratification. The Government is under no legal obligation, however, to follow the procedure indicated.[11]

[10] The Anglo-French Treaty of June 28, 1919 (the Treaty of Assistance). United Kingdom, *Treaty Series*, 1919, No. 6, Cmd. 221, for example, provides in Article 4 that:

"The present Treaty shall before ratification by His Majesty be submitted to Parliament for approval.

"It shall before ratification by the President of the French Republic be submitted to the French Chambers for approval."

The treaty was approved by Parliament in the Anglo-French Treaty (Defense of France) Act, July 31, 1919, 9 & 10 Geo. 5, c. 34. The treaty was made dependent for its effectiveness upon ratification of an identic text between the United States and France. Article 2 of the instrument reads: "The present Treaty, in similar terms with the Treaty of even date for the same purpose concluded between the French Republic and the United States of America, a copy of which Treaty is annexed hereto, will only come into force when the latter is ratified." This ratification never took place. Hence the act cited above was merely a dead letter. Mr. Denys P. Myers, in a memorandum to the writer, holds that inasmuch as the Anglo-French treaty is scheduled to the act and the American treaty added as an annex, "the reading of the three documents into each other brings one to the conclusion that the act, though positive in form, was actually conditional." This treaty is one of the few instances with which the writer is familiar in which ratification by the United Kingdom has depended on parliamentary approval; and the treaty was never ratified. This latter fact further emphasizes the principle that in the United Kingdom the making of treaties is an executive act.

[11] In moving, in the House of Commons, the second reading of the bill for giving effect to the treaty of peace with Turkey on April 1, 1924, Mr. A. Ponsonby, undersecretary of state for foreign affairs, made the following statement as to the intentions of the Government of the day "with regard to the important question of the submission of treaties to Parliament": "It has been the declared policy of the Labour party for some years past to strengthen the control of Parliament over the conclusion of international treaties and agreements, and to allow this House adequate opportunity to discuss the provisions of these instruments before their final ratification. His Majesty's Government desire at the earliest possible moment to inaugurate a new practice which will give effect to this policy. As matters stand, there is no constitutional obligation to compel the Government of the day to submit treaties to this House before ratification except in cases, such as the Treaty of Lausanne which is now under review, where a bill or a financial resolution has to receive par-

In ratifying a treaty, as in issuing full powers for its conclusion and signature, His Majesty acts upon the advice of the secretary of state for foreign affairs. When the secretary has decided to tender his advice to this effect, he again instructs the treaty department of the Foreign Office to prepare the necessary documents. These are: (1) the instrument of ratification, in which the treaty is incorporated "word for word," and (2) the warrant instructing the Lord Chancellor to cause the Great Seal to be affixed to the instrument of ratification. The secretary of state countersigns the warrant but not the instrument of ratification. The procedure followed throughout with regard to ratification is in every material respect the same as in the case of full powers. The ratification, it is made clear in the instrument, is only in respect of the United

liamentary sanction before ratification. But as a rule formal publication of a treaty does not take place until after ratification unless parliamentary action is necessary with regard to it. I need not weary the House with the many instances of important treaties which have been signed, sealed, and ratified before this House has been afforded an opportunity of discussing their provisions . . . . I come, therefore, to the inauguration of a change in custom and procedure. . . . It is the intention of His Majesty's Government to lay on the table of both houses of Parliament every treaty, when signed, for a period of 21 days, after which the treaty will be ratified and published and circulated in the *Treaty Series*. In case of important treaties, the Government will, of course, take an opportunity of submitting them to the House for discussion within this period. But, as the Government cannot take upon itself to decide what may be considered important or unimportant, if there is formal demand for discussion forwarded through the usual channels from the Opposition or any other party, time will be found for the discussion of the treaty in question. . . . There are, of course, international conventions of a purely technical character which are not subject to ratification, and there is no reason to alter the procedure with regard to them. But treaties such as those with which I am dealing do not cover the whole ground, and His Majesty's Government desire that Parliament should also exercise supervision over agreements, commitments, and understandings by which the nation may be bound in certain circumstances and which may involve international obligations of a serious character, although no signed and sealed document may exist." House of Commons, *Parliamentary Debates*, Vol. 171, 1924, cols. 2002–2006. Upon the return of the Conservatives to power nine months later, it was announced by Sir Austen Chamberlain, secretary of state for foreign affairs, that his government did not consider itself bound by the procedure adopted by the Labor government of laying all treaties on the table for twenty-one days before advising ratification, "which, apart from other considerations, might involve inconvenience in connection with the resolution on the subject adopted by the Imperial Conference, 1923, by which His Majesty's Government consider themselves bound." *Ibid.*, Vol. 179, 1924–25, col. 565. With the accession of the Labor government to power in 1929, the new secretary of state for foreign affairs, Mr. Arthur Henderson, announced the intention of his government "to restore the practice of 1924 and to lay on the table of the House, prior to ratification, those treaties which must be ratified." *Ibid.*, Vol. 230, col. 408. This is the practice followed today.

Kingdom of Great Britain and Northern Ireland, and does not bind the Dominions and India.

The instrument of ratification opens with greetings from His Majesty the King: "To all and singular to whom these Presents shall come, Greeting!" This is followed by the recital that a treaty, a convention, or an agreement, as the case may be, was concluded and signed at a certain place and date by the plenipotentiaries of His Majesty and of the other high contracting party. The exact and complete wording of the treaty, convention, or agreement is then incorporated *in extenso*, "word for word." Finally, the instrument of ratification concludes with words of confirmation and ratification and a promise of faithful performance. The instrument of ratification, with the king's signature and the Great Seal affixed to it, is thereafter exchanged, by a minister so empowered, for a corresponding instrument of ratification of the other contracting party to the treaty. The exchange of ratifications "is the final step which brings the treaty into force internationally;" and when the ratifications are exchanged, the treaty has gone into force unless otherwise specifically provided.[12] A *procés-verbal*, or protocol or certificate of exchange of ratifications, is drawn up and signed in duplicate by the representatives effecting the exchange of ratifications and sealed with their respective seals, declaring that the respective ratifications of the treaty, "having been carefully compared, and found in good and due form, the said exchange took place this day in the usual manner."[13] The instrument of ratification of the treaty by the foreign power which is thus received in exchange for the British ratification and the certificate of exchange of ratification are finally deposited in the archives of the Foreign Office. In the case of multilateral treaties, the several instruments of ratification may be deposited (rather than exchanged) at a place specified in the treaty.

III. AGREEMENTS BETWEEN GOVERNMENTS

The procedure described is applicable particularly to bilateral treaties, but it differs in no important respect from that followed in the case of multilateral treaties. It, however, is confined strictly

[12] Hunter Miller, *op. cit.*, Vol. 1, pp. 18, 19.

[13] Foreign Office, Treaty Department, *Ratifications of Treaties* (unpublished), 1931, No. 4. The alternative clause sometimes used is: "Having been carefully compared, and found to be exactly conformable to each other, the said exchange took place this day in the usual form." *Ibid.*, 1933, No. 18.

to treaties, bilateral or multilateral, concluded according to the "heads of states" formula, i.e., treaties to which His Majesty is one of the high contracting parties. It does not apply to agreements between governments. The conclusion of such agreements does not involve any formal intervention by His Majesty nor any use of the Great Seal. When an agreement between governments is contemplated, full powers are issued by the secretary of state for foreign affairs under his own signature and his own seal—the Seal of His Majesty's Principal Secretary of State for Foreign Affairs. The full power in this case is considerably less formal than that issued under the Great Seal and the signature of the king, but it includes the same provision that the signature of the plenipotentiary is subject if necessary to ratification. In this case, ratification is by the government of the United Kingdom rather than by His Majesty. The instrument of ratification of agreements between governments is similarly signed and sealed by His Majesty's principal secretary of state for foreign affairs. The instrument is likewise less formal than the instrument of ratification of treaties between heads of states. With these exceptions, the procedure described above is followed in connection with agreements between governments. In certain instances, such agreements are not ratified by instruments in the governmental form, but rather by instruments signed by His Majesty and passing under the Great Seal in the same manner as instruments of ratification of treaties between heads of states.[14] This is not actually necessary, because a governmental ratification signed and sealed by the secretary of state would suffice. The explanation of this procedure is that it is used in certain instances as a precaution against wounding the sensibilities of foreign governments by having the ratification effected by a minor government official—the secretary of state—rather than by the king himself. This practice, however, must be regarded as exceptional. Normally, a governmental agreement is ratified by a governmental form, signed and sealed by the secretary of state for foreign affairs. Accessions to treaties are not signed by or in the name of His Majesty, nor are they passed under the Great Seal. Instead, accession to treaties is effected by a governmental instrument.

[14] See, for example, the ratification of the Agreement between the United Kingdom and Denmark Relative to Trade and Commerce (April 24th, 1933), June 6, 1933. Foreign Office, Treaty Department, *Ratifications of Treaties* (unpublished), 1933, No. 11; United Kingdom, *Treaty Series*, 1933, No. 34, Cmd. 4424.

International engagements may, however, be concluded by less formal procedures and embodied in less formal instruments. The most common of these is the "exchange of notes." This is usually simply an exchange of letters (recording an agreement between two governments) between the secretary of state for foreign affairs and a regularly accredited foreign diplomatic representative in London.[15] The exchange of notes may be between His Majesty's representative accredited to a foreign country and the minister of foreign affairs of that country.[16] Exchange of notes may be effected also by certain other officers, as, for example, the notes which the acting high commissioner in Egypt, "in accordance with instructions from His Majesty's Principal Secretary of State for Foreign Affairs," exchanged with the acting minister for foreign affairs of Egypt, August 18, 1936.[17] An engagement which is not in the form of an exchange of notes, and which is much more unusual, may be cited. This is the Agreement between Representatives of the Air Ministry of the United Kingdom and the Austrian Federal Ministry for Commerce and Communications, December 14, 1932.[18] This instrument closely resembles the ordinary agreement between governments concluded under full powers from the secretary of state for foreign affairs. It deals with the issuance of permits for air transport companies, named by the Air Ministry, to operate over Austrian territory. The agreement is to remain in force until December 31, 1942, and will thereafter be automatically renewed for successive periods of five years each unless denounced by one of the contracting parties not less than one year prior to December 31, 1942, or one year prior to the termination of any of the subsequent five-year periods. Another instrument, representing a still different form and procedure, may be mentioned, namely, the Declaration by His Majesty's Government in the United

[15] Exchange of Notes between the Secretary of State and the French Ambassador to London regarding the Administration of the New Hebrides, January 31, 1935. United Kingdom, *Treaty Series*, 1935, No. 7, Cmd. 4852. Exchange of Notes between the Secretary of State and the German Ambassador to London regarding the Limitation of Naval Armaments, June 18, 1935. *Ibid.*, 1935, No. 22, Cmd. 4953.

[16] Exchange of Notes between His Majesty's Government in the United Kingdom and the Japanese Government regarding the Termination of Perpetual Leases in Tokyo, Japan, March 25, 1937. United Kingdom, *Treaty Series*, 1937, No. 29, Cmd. 5548.

[17] Exchange of Notes regarding Commercial Relations between Palestine and Egypt, August 18, 1936. United Kingdom, *Treaty Series*, 1937, No. 7, Cmd. 5361.

[18] United Kingdom, *Treaty Series*, 1933, No. 35, Cmd. 4435. The later annexation of Austria to Germany has, of course, upset this agreement.

Kingdom and the Italian Government regarding the Mediterranean, signed at Rome, January 2, 1937.[19] This is a joint statement, signed by the British ambassador at Rome and the Italian foreign minister, by which the two governments make certain declarations of policy and enter into certain undertakings "to respect each other's rights and interests" in the Mediterranean. Other examples might be given, but those cited are sufficient to demonstrate the great diversity of methods and instruments by which international engagements are undertaken by the United Kingdom.

IV. GIVING EFFECT TO INTERNATIONAL INSTRUMENTS

Under the procedures described, instruments become binding internationally as between the United Kingdom and other contracting powers. In no case, except as indicated above, is parliamentary approval necessary for the assumption of such obligations. A parliamentary vote may be necessary, however, in order to enable His Majesty or His Majesty's Government to fulfill the obligations which they have thus assumed.[20] It is a well-established rule of British constitutional law that treaties do not operate automatically to alter existing law or to affect the rights enjoyed by any persons under English law.[21] When an alteration in the law administered by British courts is necessary in order to give effect to a treaty, it is necessary that legislation for this purpose be enacted by Parliament. Such legislation may either embody the treaty in a statute or merely make such changes in the existing law as may be required to give effect to the treaty. For this purpose, new laws may be enacted or old laws may be repealed.[22] The

[19] United Kingdom, *Treaty Series*, 1937, No. 14, Cmd. 5429.

[20] Arnold D. McNair, *op. cit.*, pp. 67–68.

[21] The right of the crown, by merely making a treaty, to extend to foreigners immunities from the law of the land which would affect the private rights of citizens was raised in the case of The Parliament Belge, L.R., 4 Pro. Div. 154–155 (1879). Sir Robert Phillimore held that the treaty-making prerogative did not extend to this length. Although his decision was reversed by the Court of Appeal, L.R., 5 Pro. Div. 197 (1880), the reversal was on a different ground, and the Court refrained from expressing an opinion on the point. The same question was raised but not settled in Walker v. Baird, 1892, A.C. 491. See United States, *Ratification of Treaties*, Sen. Doc. No. 26, 66th Cong., 1st Sess., 1919, pp. 10–24.

[22] The protocol to the treaty of commerce and navigation, December 2, 1924, between Great Britain and Germany provided: "His Britannic Majesty's Government undertake to recommend to Parliament the necessary legislation for the removal of the disabilities imposed by the legislation specified below affecting German

consent of Parliament is similarly necessary in order to fulfill the obligations of any treaty which requires an appropriation of money. No charge upon the public funds and no payment of public money can be made without the sanction of Parliament.[23]

The above principles with respect to assuming and carrying out treaty obligations in the United Kingdom apply to the British Commonwealth generally and have been stated cogently by Lord Atkin in a recent judgment of the Judicial Committee of the Privy Council.

> Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of the treaty alone, have the force of law. If the national executive, the government of the day, decide to incur the obligations of a treaty which involve alteration of law, they have to run the risk of obtaining the assent of Parliament to the necessary statute or statutes. To make themselves as secure as possible, they will often in such cases before final ratification seek to obtain from Parliament an expression of approval. But it has never been suggested, and it is not the law, that such an expression of approval operates as law, or that it in law precludes the assenting Parliament or any subsequent Parliament from refusing to give its sanction to any legislative proposals that may subsequently be brought before it. Parliament, no doubt, as the Chief Justice points out, has a constitutional control over the executive; but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the executive alone. Once they are created, while they bind the State as against the other contracting parties, Parliament may refuse to perform them and so leave the State in default.[24]

The absence of necessary changes in the law or the necessary appropriation of public funds by Parliament, of course, does not in any way affect the internationally binding force of treaties. In view of this fact, a provision is sometimes inserted in the instru-

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citizens and German companies in the United Kingdom which do not extend to the subjects or citizens or companies of the most favoured foreign country." Effect is given to the protocol by the Former Enemy Aliens (Disabilities Removal) Act, 1925, 15 & 16 Geo. 5, c. 43, by merely repealing the acts enumerated.

[23] See, for example, the Austrian Loan Guarantee Act, 1933, 23 Geo. 5, c. 5, which authorizes the Treasury to guarantee the portion of the Austrian loan which His Majesty's Government had undertaken to guarantee in the protocol signed at Geneva, July 15, 1932. See, also, the Trade Facilities and Loans Guarantee Act 1922 (Session 2), 13 Geo. 5, c. 4, authorizing the Treasury to guarantee payment of the Austrian loan in accordance with the protocol signed at Geneva, October 4, 1922.

[24] Attorney-General for Canada v. Attorney-General for Ontario, 1937, A.C. 326.

ment of ratification stipulating that the undertakings contained in the treaty shall not take effect until legislation necessary for their fulfillment has been agreed to by Parliament and has received royal assent.[25] In practice, therefore, the ratification and fulfillment of British treaties may be contingent upon parliamentary approval. Furthermore, the secretary of state for foreign affairs, in advising His Majesty with respect to the negotiation, conclusion, and ratification of treaties, or in the conclusion and ratification of intergovernmental agreements upon his own authority, always acts under direct responsibility to Parliament.

Under the rules agreed upon at the Imperial Conferences of 1923, 1926, and 1930, no treaty may be negotiated in respect of the United Kingdom without due consideration of its possible effect on other members of the British Commonwealth.[26] Before negotiations are opened with the intention of concluding a treaty, steps must be taken to ensure that any of the other members of the Commonwealth likely to be interested are informed, so that if any member considers that its interests would be affected, it may have an opportunity of expressing its views or, if it so desires, of participating in the negotiations. In all cases where other members of the Commonwealth are participating in negotiations, there is to be "the fullest possible exchange of views" with the representatives of the other members both before and during negotiations. Moreover, any members whose representatives are not participating in the negotiations must, during the progress of the negotiations, be kept fully informed in regard to any points arising in which they may be interested.

Most international instruments to which the United Kingdom today becomes a party are concluded by the Government and not by His Majesty the King. If the instruments recorded in the United Kingdom *Treaty Series* for the six-year period 1931–36 may be

[25] The instrument of ratification of the Anglo-Danish trade agreement of April 24, 1933, for example, contains such a provision in the following terms: "Subject to the stipulation, however, that in regard to the duty on yeast the undertaking connoted by Article 2 of the Agreement and the Second Schedule to the latter shall not take effect until legislation necessary for its fulfillment shall have been agreed to by Our Parliament and shall have received Our Royal Assent." Foreign Office, Treaty Department, *Ratifications of Treaties* (unpublished), 1933, No. 11; United Kingdom, *Treaty Series*, 1933, No. 34, Cmd. 4424 of 1933.

[26] Similarly, no treaty may be negotiated for or by any of the Dominions without due consideration of its possible effect upon the United Kingdom or other parts of the Empire.

taken as representative, not more than one-third of the total are concluded by His Majesty. The remainder fall under the general classification of agreements between governments. In view of this, and of the further fact that His Majesty acts in the sphere of treaty-making only upon the advice of his ministers, it is often said that "the Government" has now annexed the whole of the royal prerogative with respect to treaty-making. Since, also, a Government which commands a clear majority in the House of Commons today wields practically the whole power of Parliament, it is claimed that the powers of Parliament with respect to treaty-making (and even with respect to ordinary legislation) have become a nullity. Thus it is argued that the Government "normally wields all the powers of the House of Commons as well as all the powers of the Crown."[27] This argument runs entirely counter to the theory of ministerial responsibility and doubtless represents somewhat of an exaggeration of the actual practice. The Government makes no important departure in foreign policy without announcing, explaining, and defending its policy before the House of Commons. The practice, which now seems well established, of laying treaties before Parliament prior to their ratification ensures at least some opportunity for questioning and debating their desirability before they become binding obligations upon the state. It remains true, nevertheless, that in treaty-making, and in the conduct of foreign relations generally, the Government is as little controlled as in any other sphere of its activities. This results, perhaps, from the very nature of international relations.

[27] Ramsay Muir, *How Britain Is Governed* (3d rev. ed., Boston, 1935), pp. 25, 83.

STATE CONSTITUTIONAL LAW IN 1937–38[1]

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I. GOVERNMENTAL ORGANIZATION AND PROCEDURE

Constitutional Amendment. The Pennsylvania constitution provides: "Any amendment . . . may be proposed in [either house]; and if the same shall be agreed to by a majority of the members elected to each . . . the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment shall be agreed to . . . the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and . . . submitted to the qualified electors. . . . " Herman Tausig, suing as a taxpayer, sought to prevent a popular vote on a number of proposed amendments undertaking, among other things, to repeal provisions thought to forbid the levying of graduated income and inheritance taxes and the appropriation of money for old age pensions. In holding that the action was not premature, the court stated:[2] "The law of this state prohibits inquiry into the validity of the steps preliminary to the adoption of an amendment after it has received the approval of the people." Reversing, or at least qualifying, certain earlier rulings discussed in the opinion, it demanded strict compliance with the procedure set out above, but ruled: "The framers did not intend the Secretary of the Commonwealth should be responsible for the actual publication; he has no means of accomplishing this. Nor will the submission of a proposed amendment be frustrated by the neglect or refusal of one or more newspapers to publish within the specified time. . . . All the section commands is that the secretary transmit the advertisements of the proposed amendment to the proper newspapers within sufficient time to enable them to be published . . . three months or more in advance of the election." Since it was clear that he had done this, the election was permitted to be held and the old age pension measure was ratified, all others being defeated.

In Wise v. Chandler,[3] the Kentucky court advanced several rather

[1] I am indebted to Mrs. G. C. Bell, research assistant in political science, for aid in selecting the cases to be considered in this article. They were chosen from those reported in the advance sheets of the National Reporter System from May, 1937, to May, 1938. Unless otherwise indicated, the decision was rendered by the court of last resort of the state concerned. In Oklahoma and Texas, decisions of the court of criminal appeals, although a specialized court of last resort, also are indicated.

[2] Tausig v. Lawrence, 197 A. 235 (Jan., 1938).

[3] 108 S.W. (2d) 1024 (Oct., 1937). Cf. Coleman v. Miller, 71 P. (2d) 518 (Kan., Sept., 1937).

novel doctrines relative to amending the national Constitution. These need not be considered here, since the questions involved are national rather than state. The opinion has every earmark of being purely "advisory," ending with the conclusion that although the court can do nothing it is "the duty of the Secretary of State [of the United States] to ignore" the notification that Kentucky had ratified the proposed child labor amendment. Since no true judgment could be rendered, the trial court was advised to instruct its clerk to certify a copy of its ruling to the said Secretary of State.

Elections and Direct Legislation. Rejecting contrary rulings from other states, the New York court held[4] that the proportional representation section of the charter of New York City does not violate the clause that all qualified electors "shall be entitled to vote . . . for all officers that now are or hereafter may be elective by the people." Justifying the ruling, the majority pointed out: "It is conceded by everybody that the borough could be divided into twelve districts, and one councilman elected from each district. This would give Brooklyn twelve representatives in the council, and yet the people of Brooklyn had only voted (*sic*) for one out of the twelve. . . . Remove the artificial lines creating the districts, and give Brooklyn the same twelve men in the council, it is said to be illegal if the people can only vote for one of the twelve. What is the magic in these artificial lines that creates such a difference in result with little or no difference in principle?" Tracing the history of the clause, the majority concluded that it was inserted in the constitution for the purpose of abolishing property qualifications for voting in favor of manhood suffrage. Only one judge dissented.

Stating that "a constitution is to be interpreted by the spirit which vivifies, and not by the letter which killeth," the Maryland court held[5] that a provision that "all elections shall be by ballot" does not forbid the use of voting machines.

Certain Massachusetts citizens undertook to require, through an initiative constitutional amendment, that the net proceeds of all gasoline excise taxes and motor vehicle registration and license fees be used solely for highway purposes. In response to certain questions certified by the legislature, the justices unanimously replied[6] that this effort was abortive because of the constitutional provision that "no measure . . . that makes a specific appropriation of money from the treasury of the commonwealth shall be proposed by an initiative petition." They concluded that "the aim of this article was to prevent resort to an initiative in order to segregate public moneys or a part of the public revenue to any narrow purpose."

[4] Johnson v. City of New York, 9 N.E. (2d) 30 (June, 1937).
[5] Norris v. Mayor and City Council of Baltimore, 192 A. 531 (May, 1937).
[6] Opinion of the Justices, 9 N.E. (2d) 186 (May, 1937).

Legislative Procedure. There seems to have been a gradual yet decided swing in this country to the rule that the enrolled bill "is conclusive evidence of its passage and of its terms and provisions."[7] This is a more stringent limitation upon judicial power than that found in many countries which do not pretend to have anything comparable to the American system of judicial supremacy. However, the West Virginia court refused to accept this doctrine. In the confusion attending the session, the legislature sent the governor a bill in the form in which it had been introduced rather than that in which it had passed. In holding that the bill had not become a law in spite of its publication in the session laws, the court stated[8] that in West Virginia "every fact upon which, in any view, depends the question whether a document purporting to be a statute has, by legislative action, been invested with the force of law, is, in its nature, a public fact and will be noticed by the court."

In two closely connected cases, the Rhode Island court succeeded in dodging the issue, merely conceding: "Conceivably a persistence in a course of conduct which would bring about enactment of legislation, in violation of the constitutional rights of the majority of the people, might so affect any legislation, so enacted, as to taint it with the charge of unconstitutionality, whenever it might be questioned in a litigated case."[9] The state constitution provides: "The yeas and nays . . . shall, at the desire of one-fifth of those present, be entered on the journal." It seems that the presiding officer of the lower house, in the rush sessions attending final passage by each house of its own bills, declared certain measures passed on a *viva voce* vote and refused to grant a roll-call even though demanded by 52 members, constituting a majority of the entire membership. This majority sought to secure an opinion from the judges of the supreme court under the provision that they "shall give their written opinion upon any question of law whenever requested by the governor or by either house of the general assembly." The speaker, however, refused to entertain such a motion, and it was presented to the court simply as a request of a majority of the members. The opinion[10] stated: "Majority rule is firmly imbedded in our fundamental law. . . . The presiding officer . . . is subject to that law and must be governed by it. . . . He is the servant of

[7] Spaulding v. Desmond, 188 Cal. 783, 790 (1922). Cf. the earlier ruling of the same court in Weill v. Kenfield, 54 Cal. 111 (1880), holding an alleged statute void because the journal showed that two of the three readings in each house had been by title only.

[8] Charleston National Bank v. Fox, 194 S.E. 4 (Nov., 1937), quoting from 15 R.C.L. 1066. In 1925, the California civil service commission was abolished in this very manner, the governor signing (apparently knowingly) a bill in a form in which it had been overwhelmingly defeated in the senate.

[9] To Certain Members of the House of Representatives, 191 A. 269, 272 (April, 1937). [10] *Ibid.*

the House and not its master. . . . He should be solicitous not to violate the law himself and thereby forfeit the right to such respect and obedience." But the judges concluded: "Because the petitioners, although constituting a majority of the House, have not in this matter acted as the House, . . . and because we feel that the presiding officer, if he has acted as the petition alleges, has misconceived his duty toward the majority and will not, when informed, persist in denying to them any of their constitutional rights, we are of the opinion that we are not authorized and required by the Constitution to give our advisory opinion as requested."

The warning was to no avail. Only 16 days later, and just two days prior to the date set for final adjournment, 21 members of the senate, under virtually identical circumstances, requested an opinion as to the legality of their president's action in declaring certain bills passed after refusing to permit a roll-call vote. The court delayed its answer until the legislature adjourned, when it announced[11] that this adjournment had served to nullify the request if it could have been entertained in any case. As the governor signed several of these bills, the issue is almost certain to be raised in later litigation.

Delegation of Legislative Power to Private Groups and to the Electorate. In sustaining the state agricultural adjustment act, the California court held[12] that the director can be forbidden to enter into a marketing agreement unless it is assented to in writing by 80 per cent of the persons engaged in the industry concerned. The opinion attempted to distinguish between a private veto, which is valid, and private initiative, which may be invalid. A California district court of appeal invalidated[13] a statute providing that "any party or his attorney to any cause or proceeding of any nature pending in a superior or municipal court, except the people or district attorney in a criminal case, may make . . . a peremptory challenge in writing of the judge assigned to try or hear the cause or pending matter. Thereupon, without any further act or proof, the presiding judge . . . shall assign some other judge to try the cause or hear the pending matter." The judges were of opinion that although "the legislature has plenary power to prescribe the grounds which shall constitute the disqualification of a judge . . . its power to delegate to a private citizen or to an attorney at law the right to determine that disqualification, based upon his or their own peculiar wishes, desires, or antipathies, is an entirely different matter," and must be denied. They added that the clause discriminating against the prosecution in criminal cases violates the guarantee, "nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." Although their

[11] To Certain Members of the Senate, 191 A. 518 (April, 1937).
[12] Brock v. Superior Court, 71 P. (2d) 209, 213 (July, 1937).
[13] Daigh v. Schaffer, 73 P. (2d) 927 (Nov., 1937).

statement that "there is no reason why the rights of the people are not equal to the rights of a defendant" may be sound common sense, it certainly is not the premise upon which American criminal procedure was constructed.

Finding his desire to put the state into the public utility business blocked by the state constitution, Wisconsin's versatile young governor had certain of his political cronies incorporate the Wisconsin Development Association for the stated purpose of encouraging municipal and coöperative acquisition and operation of all forms of public utilities, and of engaging in the utility business as a holding or as an operating company. Under the terms of a 1937 statute, it was to receive $60,000 per year from the state to aid it in fostering municipal ownership and in surveying the power resources of the state. Although reaffirming its previous rulings that the state may subsidize such private institutions as industrial schools and orphanages and may employ private companies to perform public undertakings when no control is left in the hands of the private corporation to determine the questions of policy concerned, the court unanimously held[14] that the legislature had undertaken to give to the W.D.A. power to determine questions of policy of an essentially governmental nature.

In the absence of constitutional provision for direct legislation, the majority rule forbids state-wide referenda on proposed laws. Tennessee has construed this rule to prohibit a county referendum on a special act applicable only to said county.[15] In Clark v. State *ex rel.* Bobo,[16] an effort to influence the court to reverse prior rulings and hold that any local option law—in this case, an act validating the manufacture of intoxicants—is invalid, was unsuccessful.

Delegation of Legislative Power to the Administration. In State v. Heffernan,[17] the New Mexico court held that although the game commission can be authorized to set the open season and bag limits, and to determine the methods of hunting and fishing, the legislature must itself define "game animal." In Iowa, the authority of the conservation commission to "adopt rules and regulations . . . whenever . . . such regulations shall be desirable for the proper use and conservation of the resources of the state" was invalidated[18] as a "roving commission" and a "vagrant and undefined power to establish and make law." The only test offered in the former case was that it "would be unreasonable and unscientific" to insist

[14] State *ex rel.* W.D.A. v. Dammann, 277 N.W. 278 (Jan., 1938).

[15] Wright v. Cunningham, 115 Tenn. 445 (1905). Although the act applied to "counties having a population by the Federal Census of 1900, or any subsequent Federal Census, between 14,200 and 15,000," the court was impressed by the fact that only Rhea county met this test.

[16] 113 S.W. (2d) 374 (Jan., 1938). [17] 67 P. (2d) 240 (April, 1937).

[18] State v. Van Trump, 275 N.W. 569 (Oct., 1937).

upon "a senseless and narrow technical construction" of "legislative power," while the Iowa opinion stated: "This court has endeavored, within constitutional limits, to pursue a 'common sense' policy in determining the extent to which delegation may be permitted, and to give due consideration to the necessities of governmental coöperation and the practical difficulty of adapting legislation to complex conditions."

In Tennessee Electric Power Co. v. City of Chattanooga,[19] a taxpayer sought to enjoin the city from constructing a municipal electric plant and distributing system. Among other arguments, the attorneys insisted that the legislature is powerless to permit a city board to set the rates to be charged for the services furnished by it. Of course the argument went for naught, and is merely further evidence that much of our litigation is undertaken largely for its nuisance value. In recent years, this has been particularly true where, as here, "New Deal" agencies (T.V.A. and P.W.A.) are concerned.

Although the Pennsylvania court[20] started an opinion with the premise that "the power to tax is peculiarly a power of the legislature" and cannot be delegated, it immediately switched to the very different one that the power to tax can be exercised only by a popularly elected body. This enabled it to justify its previous rulings sustaining the delegation of this power not alone to municipal corporations, but to elective school boards. However, since 1911, the Philadelphia school board has been appointed by the judges of the courts of common pleas, and since 1929 it has enjoyed (according to the conclusions of the court) a degree of independence in setting the tax-rate for school purposes. Hence the unanimous ruling that it is without authority to levy any tax whatever. The opinion is significant for its *obiter* attack upon the wasteful financial practices of American school administrators, but of course the court was careful to point out that these practices were ignored in passing upon the purely constitutional issues involved.

One can well imagine the chaos which would have resulted from the granting of an order restraining the collection of all future school taxes. For this reason, the court, asserting the discretionary power still inherent in equity, modified the injunction to permit the school board to continue its existing 1937 tax-rate for the years 1938 and 1939, or until after the next regular session of the state legislature. It recommended that any necessary additional funds be raised by the board exercising its power to borrow money—a suggestion which would seem to nullify its insistence that taxes be not increased by merely postponing the evil day. The court failed to explain why the power to borrow money is less "legislative" than that to levy taxes.

[19] 114 S.W. (2d) 441 (March, 1937).

[20] Wilson v. School District of Philadelphia, 195 A. 90 (Nov., 1937).

Administrative Power. It seems to have become an established custom in South Carolina to authorize the county delegations in the legislature to exercise a wide degree of control over the administration of special laws applicable to their respective counties. In Bramlette v. Stringer,[21] the court decided to call a halt to the practice and held that to authorize such legislators to decide what, if any, portion of an authorized bond issue shall be issued, and which, if any, highways shall be constructed, converts them into an administrative board in defiance of the concept of the separation of powers. One prior ruling sustaining the custom was expressly overruled, but others were merely "distinguished." They will live to plague later members of the court.

Judicial Power. A New Jersey trial court[22] entertained an election contest involving a seat in the state senate. The contention that the petition was a request for a purely advisory opinion was met with the response that the matter was a judicial one because its ruling, although not binding on the senate, would constitute *prima facie* evidence of title to office. It set aside the election for fraud. The Tennessee court, following a very different line of reasoning, held[23] that *if it could* pass upon the qualifications of a member of the lower house, it would hold that the defendant had lost his seat by qualifying as a county judge. It found an additional barrier to action in that the ruling of the house, holding him eligible for continued service, constituted a binding judgment within the doctrine of *res judicata.*

California statutes require all disputes arising between private employment agents and their clients to be referred "to the commissioner of labor, who shall hear and determine the same, subject to appeal within ten days to the superior court where the same shall be heard *de novo.*" Since the commissioner's findings are not binding, the court[24] sustained the act and prevented suit prior to a hearing before the commissioner. Had the legislature undertaken to curb the authority of the courts to act following the hearing, the act undoubtedly would have been held to constitute an unlawful attempt to vest judicial power in an administrative officer. Oregon held[25] that a court cannot be authorized to appoint and supervise a receiver for a defaulting municipal corporation, such receiver to be virtually a merged manager and council.

Last year's article (see this REVIEW, Aug., 1937, p. 665) discussed a ruling of the Missouri court punishing non-lawyer officials of the Missouri Pacific Railroad for contempt for representing the corporation before the

[21] 195 S.E. 257 (Feb., 1938).
[22] *In re* Hunt, 191 A. 437 (Circuit Court of Cape May County, April, 1937).
[23] State v. Shumate, 113 S.W. (2d) 381 (Feb., 1938).
[24] Collier & Wallis, Ltd. v. Astor, 70 P. (2d) 171 (July, 1937).
[25] City of Enterprise v. State, 69 P. (2d) 953 (June, 1937).

state railroad commission in a rate case. In an action brought by the Chicago Bar Association, the Illinois court[26] imposed a like penalty upon a workmen's compensation adjuster who was practicing before the state industrial commission. "The power to regulate and define the practice of law," the majority stated, "is a prerogative of the judicial department. . . . The practice of law, both in and out of courts, by one not licensed, is an illegal usurpation of the privilege of an attorney and is a contempt of this court. . . . The General Assembly has no authority to . . . declare not to be the practice of law those activities the performance of which the judicial department may determine is the practice of law." The dissenting judges would seem to have the better of the argument. Meeting the majority on their own ground, they concluded: "If we say that the Legislature may not tell us whom (*sic*) shall be admitted as attorneys, it follows inexorably that we cannot tell the administrative or executive department whom they shall receive before their boards or commissions." They also felt that "we have no power of punishment for contempt beyond the confines of our own court or some court over which we have appellate or supervisory jurisdiction. . . . Such conduct is not calculated to bring the court into disrepute, nor to impair its dignity."

The Tennessee legislature found that it cannot make a judge incompetent to sit in a case because he is related by blood to counsel, the court stating[27] that "the only manner in which it may exercise power over the personnel of the courts by a disqualification of the judges thereof is by a proper interpretation and exercise of the power granted in the constitutional provision defining the standards for incompetency of judges." It might well have added that since this provision is self-executing, the legislature is left without any power on this score.

A ruling of the Nebraska court[28] marks a new departure in the movement for an integrated and self-governing bar. The voluntary bar association, following a poll of its members, petitioned the court to integrate the bar by rule of court. In acting upon this request, the judges stated that when similar steps have been taken elsewhere under the terms of a statute, the courts have followed the statute merely out of deference to the legislature, since in fact they were "but exerting an inherent power." The rules which they promulgated govern both organization of the bar, including the payment of dues, and the procedure to be followed in disbarment cases. Admission is left undisturbed, except that the neophyte must join this association. The tasks delegated to the Committee on American Citizenship bear the stamp of recent political troubles, one being to

[26] People *ex rel.* Chicago Bar Association v. Goodman, 8 N.E. (2d) 941 (Feb., 1937).

[27] Moore v. Love, 107 S.W. (2d) 982 (Aug., 1937).

[28] *In re* Integration of Nebraska Bar Association, 275 N.W. 265 (Sept., 1937).

foster "the furtherance of a national movement on behalf of a better and more loyal adherence to American institutions and ideals"—including, no doubt, the independence of the judiciary.

Procedure to Enforce Constitutional Guarantees. On January 2, 1929, the federal Supreme Court held[29] that a Georgia statute did not violate the due process clause of the Fourteenth Amendment. Shortly thereafter, attacking an identical Florida law, counsel alleged that it violated the equal protection clause. The trial court ruled against them, and they appealed. Before the appeal was heard, the Supreme Court granted a rehearing in the Georgia case and held[30] that the statute did deprive railroad companies of due process. Counsel in the Florida case then tried to raise this argument, but the Supreme Court held[31] that by failing to raise it at the first opportunity, i.e., at the trial, they had waived it. Hence the statute, admittedly unconstitutional, was held to govern this case.

This somewhat startling result was merely the natural consequence of an accepted rule of pleading. The Montana court, however, has revolted against it. As explained in its opinion,[32] "Following the conclusion of the argument and during our deliberations . . . it was suggested by one or more members of this court that if the act of 1935 was applicable to this estate . . . the act, as to all such estates, was violative of [the state constitution]. This constitutional question was neither suggested, briefed, nor argued in the case prior to its submission for decision." It then explained that it set the case for reargument and notified counsel of its doubts on this point, which was subsequently briefed and argued. Finding that in Marbury v. Madison[33] "the constitutional question was raised by the court itself on behalf of one who never appeared before the court, and it did not have the benefit of the advice or briefs of counsel," the judges concluded: "The constitutional question is decisive on the appeal of the state. If we declined to decide this question, we would be avoiding the performance of a duty. If the 1935 act is in fact unconstitutional, to decline to so declare would be a violation of our oaths of office. Therefore, the question must be decided." It held that to give retroactive effect to a clause providing for the deduction of the national estate tax before the state inheritance tax was computed would violate the provision that no obligation due to the state shall be remitted or reduced.

However much can be said for the court's conclusion, it is submitted that in accepting Marbury v. Madison as authority the learned judges overlooked two very important distinguishing facts. In that case, the

[29] Western and Atlantic R.R. v. Henderson, 278 U.S. 577 (1929).
[30] Western and Atlantic R.R. v. Henderson, 279 U.S. 639 (1929).
[31] Seaboard Air Line Ry. v. Watson, 287 U.S. 86 (1932).
[32] *In re* Clark's Estate, 74 P. (2d) 401 (Nov., 1937).
[33] 1 Cranch 137 (U.S. 1803).

Supreme Court not only was the trial court, but the question of the validity of the statute was a jurisdictional one.

In their efforts to provide a more expeditious method of settling constitutional issues, many states have provided for advisory opinions. Several such opinions are discussed in other sections of this article. The Rhode Island cases, discussed above,[34] reveal a possible defect in the present set-up so far as questions of legislative procedure are concerned. Other cases, too numerous to mention, reveal a continued and studied reluctance on the part of the courts to face important issues in advisory cases if this can be avoided. In many of these, this reluctance seems to have been quite unnecessary and is to be regretted.[35] As usual, many of the best "advisory" opinions of the year were disguised as *dicta*.[36]

The declaratory judgment gives promise of playing an ever-increasing rôle in constitutional litigation. In Acme Finance Co. v. Huse,[37] two judges insisted that the Washington—which is the uniform—act is available only "to construe contracts and statutes—not to abrogate, annul, supplement, or detract from them." To be sure, certain technical difficulties may arise that may cause one to wish that this were the case.[38] The majority, however, held the act, not yet in force, to be unconstitutional. Combatting the argument that the declaratory judgment will lend itself to "the practice of entertaining agreed cases involving the constitutionality of statutes," Mr. Justice Geraghty (concurring) replied that this practice "has become firmly established" under the normal procedure, cases being brought "by connivance" in which "we know, as every one knows, no real controversy has arisen, and that the object of the suit is to take the opinion of this court."

II. GOVERNMENTAL RELATIONS

The Nation and the States. Efforts to convince the state courts that current unemployment insurance legislation is unconstitutional in that it delegates state powers to the national government continue to be unsuccessful. Although the Mississippi court[39] conceded that it is "not bound by a federal court decision as to the meaning or constitutionality of a

[34] See p. 672.

[35] This is particularly true of *In re* Opinion of the Justices, 191 A. 485 (Me., Dec., 1936), and of the companion case, same title, in 191 A. 487 (Nov., 1936). No explanation is given for the long delay in publishing these opinions. The court's reluctance to proceed without argument could have been cared for by inviting the parties to appear.

[36] See the cases cited in notes 3, 9, 20, 23, and 94.

[37] 73 P. (2d) 341 (Oct., 1937).

[38] What would be done today if a substantial minority of employers, prior to the 1937 reversal of the Adkins case, had secured declaratory judgments that minimum wage laws for women cannot be applied to them?

[39] Tatum v. Wheeless, 178 So. 95 (Jan., 1938).

state statute" under the state constitution, it found no defect in the law of its state. The Alabama court[40] refused to entertain the argument of coercion of the state by the nation, and concluded that there had been no delegation of legislative power to Congress, since the Social Security Act was in force when the state act was passed. It cake-walked around the prickly issues raised by the fact that the state statute is to become invalid in case the Social Security Act is held unconstitutional by the federal Supreme Court. The opinion intimated, however, that it may be that the nation and the state have greater leeway in dovetailing their legislative programs than is the case with two states, whose territorial jurisdictions do not overlap. Much can be said for this view on practical grounds.

In an opinion holding that the invalidity of the Agricultural Adjustment Act has not affected the validity of the corresponding state act, the California court[41] asserted: "It is, of course, perfectly valid to adopt existing statutes, rules, or regulations of Congress or another state by reference; but the attempt to make future regulations of another jurisdiction part of the state law is generally held to be an unconstitutional delegation of legislative power." This would seem to indicate that it would not sustain the section providing that every order, rule, or regulation of the Secretary of Agriculture under the National Agricultural Adjustment Act, "heretofore or hereafter made," is applicable to all intrastate transactions.[42] Nevertheless, it sustained the milder provision that no state regulation for intrastate commerce can be made unless similar national regulations are in force for interstate commerce.

The State and Its Local Governments. Courts continue to have difficulty distinguishing between ordinances which provide "additional and further regulation" of matters only partially covered by statute and those which conflict with the policy thought to be established by the state law. In Arizona, an ordinance requiring *all* milk sold to be pasteurized was sustained.[43] Similarly, the Wisconsin court held[44] that the fact that the statutes forbid endurance contests in excess of sixteen hours per day, or of six days, does not invalidate an ordinance forbidding all endurance contests. Nebraska concluded that an ordinance forbidding the sale of liquor to minors is entirely consistent with a statute forbidding sale to minors "knowing them to be such."[45] Ohio could see nothing wrong with

[40] Beeland Wholesale Co. v. Kaufman, 174 So. 516 (March, 1937).

[41] Brock v. Superior Court, 71 P. (2d) 209 (July, 1937).

[42] Compare the ruling *In re* Lasswell, 1 Cal. App. (2d) 183 (1934), discussed in this REVIEW, Vol. 29, p. 611.

[43] City of Phoenix v. Brenninger, 72 P. (2d) 580 (Oct., 1937).

[44] Fox v. City of Racine, 275 N.W. 513 (Oct., 1937).

[45] Bodkin v. State, 272 N.W. 547 (April, 1937).

stricter closing hours,[46] while Oklahoma held that this constituted conflict and invalidated the ordinance.[47]

Stating that "the purpose of the constitutional provision [as to home rule charters] is to render cities independent of state legislation as to all subjects which are of strictly municipal concern; therefore, as to such matters general laws applicable to cities yield to the charter," the Nebraska court held[48] that adoption of such a charter frees the city from statutory tax limitations. It conceded that "there is no sure test which will enable us to distinguish between matters of strictly municipal concern and those of state concern."

III. INDIVIDUAL RIGHTS: PROCEDURAL

As usual, the rights of persons accused of crime were a constant source of litigation. Although the California court's latest ruling in the Mooney case[49] was one of the most significant of the year, it is omitted here because only questions of federal constitutional law were involved. Indeed, the opinion made it painfully evident that the court still intends that the prisoner shall be given no more than the irreducible minimum of his federal guarantees. The few significant cases involving questions of civil procedure are grouped as a unit at the close of this section.

Search and Seizure. The Maryland court having clung to the common law rule that evidence is not rendered inadmissible because of the illegal manner in which it is secured, a 1929 statute provided: "No evidence in the trial of misdemeanors shall be deemed admissible where the same shall have been procured by, through, or in consequence of any illegal search or seizure or of any search and seizure prohibited by the Declaration of Rights of this State." Under federal procedure and that of most states, the right to exclude such evidence is waived unless a motion to quash it is filed *prior* to the opening of the trial. The Maryland court held[50] that such a motion cannot be entertained, which will force defendant's in that state to raise the issue in the presence of the jury. It also held[51] that the statute does not forbid the use of evidence secured by tapping telephone wires, since this involves neither a search nor a seizure.

The Oklahoma justices continue to set aside numerous convictions, nearly always involving the liquor laws, because of the use of evidence

[46] City of Coshocton v. Saba, 8 N.E. (2d) 572 (Court of Appeals, Coshocton County, Dec., 1936).

[47] *Ex parte* Ferguson, 70 P. (2d) 1094 (Cr. App., July, 1937).

[48] Eppley Hotels Co. v. City of Lincoln, 276 N.W. 196 (Nov., 1937).

[49] *Ex parte* Mooney, 73 P. (2d) 554 (Oct., 1937).

[50] Sugarman v. State, 195 A. 324 (Oct., 1937).

[51] Hitzelberger v. State, 197 A. 605 (March, 1938). Cf. Olmstead v. United States, 277 U.S. 438 (1928); Nardone v. United States, 302 U.S. 379 (1937).

which, according to the rather harsh and at times seemingly absurd rules of that court, has been secured illegally. The apparent refusal of the police to mend their ways seems to have frayed the nerves of the judges, who occasionally show a lack of good taste in their opinions.[52]

However illegal the seizure may have been, the general rule gives no right to recover property where its mere possession is illegal. Following this doctrine, the Oklahoma[53] and Tennessee[54] courts ordered large quantities of illegally seized intoxicants destroyed.

John Doe Warrants. In providing for the issuance of warrants of arrest, the California Penal Code merely stipulates: "The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name." The failure to require any description of the person sought, even when not named, led the courts to sustain general warrants. However, in 1933, division one of the district court of appeal, first district, held[55] that such a warrant violates the constitutional provision that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized." Ignoring the California cases, the court based its decision upon the federal Supreme Court's interpretation of the similar clause in the federal bill of rights.[56] In 1937, division two of the same court, without mentioning the federal rule or this 1933 case, held[57] that this clause governs only the issuance of search warrants. The reasoning of the latest opinion seems somewhat weak. Not only is it hard to understand why the seizure of one's property is a more serious interference with individual rights than the seizure of one's person, but it must be remembered that validating an arrest also validates a search of the person arrested and at times of the place where the arrest is made. Nor was there any necessity,

[52] In reversing a conviction where the officer making the arrest, under circumstances which would constitute ample justification for such arrest in most states, was accompanied at the time by a motorist who was in trouble and whom he was driving to a service station, the opinion commented: "The record does not disclose why there should be any jealousy between the defendant . . . and the witness Wheeler as each of them had their woman, and there was no testimony that defendant tried to interfere with the woman the patrolman had with him in his car." Bowdry v. State, 77 P. (2d) 753 (Okla. Cr., March, 1938). Were the police to make such remarks concerning the judges, they would be punished for contempt of court. One may doubt if such tactics will succeed where reversals have failed.

[53] Lee v. State, 71 P. (2d) 1090 (Sept., 1937).

[54] Ambrester v. State, 110 S.W. (2d) 332 (Nov., 1937).

[55] *In re* Schaefer, 134 Cal. App. 498.

[56] West v. Cabell, 153 U.S. 78 (1894).

[57] Elliott v. Haskins, 67 P. (2d) 698 (April, 1937).

on the facts of the case, for resort to a general warrant, since the police then held the man sought by the sheriff. Apparently, the California rule will remain in doubt until the state supreme court renders a clear-cut ruling on the subject.

Successive Prosecutions. The California court's premise that the rights of the state must be identical with those of the defendant[58] would seem to find logical application in the rule that the prosecution enjoys the same right of appeal from an acquittal that the defendant enjoys from a conviction. This rule, recently adopted by statute in Canada,[59] has been law in Connecticut for over fifty years. In State v. Palko,[60] the court again sustained it.

"Perjury in reality constitutes, when committed in court, two offenses, one against the state, and the other against the court and its dignity. . . . The power of the court to commit and punish for contempt is inherent," and is not subject to legislative control. Stating thus, the New Jersey court of chancery held[61] that such a defendant not only is not protected against successive prosecutions, but cannot plead the statute of limitations when prosecuted for contempt.

In State v. Fredlung,[62] the defendant, in an automobile accident, killed two persons. Acquitted of third degree murder as to one of these, his plea of former jeopardy was rejected when he was brought to trial on a similar charge involving the other. Counsel would have done well to rely upon *res judicata* rather than upon *autrefois acquit*, as the scope of the former is often much broader than that of the latter. Thus, in State v. Heffernan[63] the defendant, having properly been convicted of killing a game animal (i.e., a bear) out of season, was released on a writ of *habeas corpus*, the judge erroneously concluding that the statute under which the conviction had been secured was unconstitutional. Subsequently convicted of possessing the skin of said animal, the court held that although possession is an offense distinct from killing, "To prove the instant case the state would have to prove that the skin . . . was taken from a bear that was a game animal. The court having already adjudicated (between these same parties, even though erroneously) that the bear was not a game animal, it is not the policy of the law to permit this

[58] See p. 673.

[59] See D. C. Woods, "Criminal Law Administration in Canada," 14 *Texas Law Rev.* 337, 352 (1936).

[60] 191 A. 320 (March, 1937). The state appealed from a conviction of second degree murder, was granted a new trial, and secured a conviction for first degree murder. In Palko v. Connecticut, 302 U.S. 319 (Dec., 1937), one judge dissenting, it was held that this does not violate due process. The opinion intimated a willingness to reconsider the right of the federal government to adopt such a practice.

[61] *In re* Jibb, 191 A. 552 (April, 1937). [62] 273 N.W. 353 (Minn., May, 1937).

[63] 67 P. (2d) 240 (N. Mex., on rehearing, April, 1937).

same question between the same parties to be again litigated." Thus the accused escaped all punishment, whereas, had the state appealed the *habeas corpus* case, two penalties could have been imposed.

There were many other cases in which defendants profited from mistakes of the trial court or of the prosecution. In *Ex parte* Rockwood,[64] the judge was so convinced of the defendant's guilt of the charge of contributing to the delinquency of certain minors that he discharged the jury and found him guilty. The discharge was held to have terminated the action and to bar the bringing of another. In Jackson v. Superior Court,[65] before the indictment was read or the plea stated to the jury, the judge, on motion of the prosecution, discharged the jury because of errors in its selection. In State v. Whitman,[66] the court, incensed at the conduct of counsel for the defense, declared a mistrial. In each case, the defendant was held to be exempt from further prosecution.

Jury Trial. A St. Paul ordinance provides that one convicted of driving a motor car while under the influence of intoxicating liquor shall be fined not more than $100 or imprisoned not to exceed ninety days. The penalty is identical with that imposed by the state law covering the same conduct. Yet when a municipal judge undertook to grant a jury trial to one accused under it, he was prohibited from doing so, the court holding:[67] "A person tried for violation of an ordinance is not entitled to a jury trial, although the ordinance is but a reiteration of the provisions of a statute covering the same offense, and although the person charged would be entitled to a jury trial if prosecuted under the statute." Instead of the oft-repeated assertion that municipal prosecutions are only quasi-criminal in nature,[68] the court based its conclusion upon the premise that the violation of an ordinance is but a "petty offense." This did not stop it from adding, *obiter*, that prosecution under the ordinance would not bar a subsequent prosecution under the statute.

People v. Love[69] held that it is constitutional to dismiss a juror who becomes incapacitated (due to intoxication) during the deliberation of the jury and to substitute one of the alternates. California[70] and Oklahoma[71] held that since the defendant in a felony case can waive a jury, he can waive a full quota and accept trial by eleven.

[64] 69 P. (2d) 703 (Kan., July, 1937). [65] 74 P. (2d) 243 (Cal., Dec., 1937).

[66] 74 P. (2d) 696 (Utah, Dec., 1937).

[67] State *ex rel.* Connolly v. Parks, 273 N.W. 233 (Minn., May, 1937).

[68] See J. A. C. Grant, "Penal Ordinances and the Guarantee Against Double Jeopardy," 25 *Georgetown Law Jour.* 293, 297 (1937).

[69] 70 P. (2d) 202 (Cal. App., July, 1937).

[70] People v. Clark, 74 P. (2d) 1070 (Cal. App., Jan., 1938).

[71] Trott v. State, 70 P. (2d) 118 (Okla. Cr., July, 1937). The opinion correctly stated that "the authorities are in hopeless conflict" on this point.

Self-Incrimination. In People v. Hayes,[72] the trial judge had permitted a sound motion picture of the defendant making a confession to certain police officers to be reproduced before the jury. In sustaining the conviction, the opinion stated: "In keeping with the policy of the courts to avail themselves of each and every aid of science for the purpose of ascertaining the truth, such practice is to be commended as of inestimable value to triers of fact in reaching accurate conclusions." In Commonwealth v. San Juan,[73] a Pennsylvania superior court held that "although the decisions in the various states are in conflict,[74] . . . the better rule is, the defendant may be identified and his appearance called to the attention of the court and jury . . . in determining whether [he] is of sufficient age to be guilty under the statute."

Procedure in Civil Cases. The Oklahoma court held[75] that "the motion of a litigant to compel production of documentary evidence in possession of the adverse party . . . must describe with reasonable particularity the document sought and its materiality to the issues." Otherwise, to grant it would be to undertake an unconstitutional search and seizure.

Originally, deficiency judgments were awarded by common law courts in jury actions. For upwards of a century, or even longer in some states, they have been granted in equitable actions. Efforts to force a return to jury trials failed in New York,[76] where the court divided four to three, and in Illinois.[77] Florida[78] sustained the right of its chancellors to cancel real estate brokers' licenses, while Iowa[79] and Oklahoma[80] held that the sanity of a person may be passed upon by a judge alone. Two judges dissented in the Iowa case. On the other hand, suits for attorneys' fees must be tried by jury in Kansas,[81] even though they involve the examination of long accounts. "The constitutional provision guaranteeing jury trials," the opinion explained, "is not directed at trial efficiency, but to protect the individual from oppression."

IV. INDIVIDUAL RIGHTS: SUBSTANTIVE

Retroactive Laws. In holding that the Nebraska mortgage moratorium of 1933, renewed for two more years in 1937, violates the contract clause

[72] 71 P. (2d) 321 (Cal. App., June, 1937). The supreme court denied a rehearing July 9, 1937. [73] 195 A. 433 (Dec., 1937).

[74] See J. A. C. Grant, "Self-Incrimination in the Modern American Law," 5 *Temple Law Quar.* 368, 375 (1931).

[75] State v. Chickasha Milling Co., 71 P. (2d) 981 (Sept., 1937).

[76] Jamaica Savings Bank v. M. S. Investing Co., 8 N.E. (2d) 493 (April, 1937).

[77] Martin v. Strubel, 10 N.E. (2d) 325 (June, 1937).

[78] J. B. Green Realty Co. v. Florida Real Estate Commission, 177 So. 535 (Nov., 1937). [79] *In re* Brewer, 276 N.W. 766 (Dec., 1937).

[80] Ned v. Robinson, 74 P. (2d) 1156 (Sept., 1937).

[81] Hasty v. Pierpont, 72 P (2d) 69 (Oct., 1937).

of the state constitution, the majority wrote:[82] "With reference to the federal Constitution, the rule as announced by the Supreme Court of the United States is controlling, and where it relates to similar provisions of the state constitution it becomes at most but persuasive. . . . The United States Supreme Court and the supreme court of this state are peers. The decisions of the former upon the federal Constitution and laws are binding on the latter: the decisions of the latter upon the constitution and laws of Nebraska are binding on the former."[83] The dissenting judge's insistence that existing economic distress, under the doctrine of the Blaisdell case,[84] justifies such interference with contractual obligations was met with the rejoinder: "Why should frugal persons who have saved and invested in farm mortgages expecting to live off of the income in their declining years be required to suffer in order that a mortgagor who has breached his contract may have a respite?"

Although, in general, state decisions tend to follow federal interpretations of similar guarantees, the above case is by no means extraordinary in that it finds more stringent limitations upon legislative power in the identical language of the state constitution.[85] The same would appear to be true of a South Carolina decision invalidating a statute reducing deficiency judgments in foreclosure suits where the property is caused to be sold for less than its "true" value.[86]

Imprisonment for Debt. It is settled law that one refusing to make alimony payments may be imprisoned for contempt of court. The same seems to be true of sums ordered to be paid in connection with a judgment for separate maintenance.[87] However, when the payments are due in keeping with the terms of a property settlement voluntarily entered into by the parties, even though approved by the court, the sum due is regarded as a debt and cannot be made the basis of a contempt proceeding. But in Miller v. Superior Court[88] the judge not only had approved the property settlement, but had made it "a part of the decree," which con-

[82] First Trust Co. of Lincoln v. Smith, 277 N.W. 762, 767, 772 (Feb., 1938).

[83] Although the last statement was not strictly accurate when written, it has been made so through the reversal of Swift v. Tyson by Erie R. R. v. Tomkins, 58 S. Ct. 817 (April, 1938).

[84] 290 U.S. 398 (1934), discussed in this REVIEW, Vol. 29, p. 54.

[85] See this REVIEW, Vol. 29, p. 621; Vol. 30, pp. 693, 707; Vol. 31, pp. 668, 672, 674. And see *infra*. I have discussed this subject in *Annuaire de l'Institut International de Droit Public* (1937), p. 314.

[86] Federal Land Bank of Columbia v. Garrison, 193 S.E. 308 (May, 1937). The court attempts to reconcile its ruling with that in Richmond Mortgage and Loan Corp. v. Wachovia Bank & Trust Co., 300 U.S. 124 (Feb., 1937), by quoting portions of each of two sentences from the latter opinion. In view of the facts of the two cases, the effort is scarcely successful.

[87] Ellery v. Superior Court, 77 P. (2d) 280 (Cal. App., March, 1938).

[88] 72 P. (2d) 868 (Cal., Oct., 1937).

tained "a provision expressly ordering defendant 'pursuant to said agreement to pay plaintiff for her maintenance the sum of. . . .' " The California court unanimously held that this sufficed to deprive the payments of their ordinary status and to authorize punishment for contempt. If this doctrine and the accompanying practice are generally adopted, we may as well forget the old rule.

New York authorizes a court to make an order directing a judgment debtor to make payments in installments out of the income which he receives. Somewhat similar statutes have been passed in Massachusetts, England, and Nova Scotia, and are efforts to deal with one of the greatest defects in modern legal administration—the inability to enforce readily the ordinary money judgments of the courts. Pursuant to this statute, the decree had ordered a steamship inspector, employed by the federal government at a monthly salary of $230, to pay installments of $20 a month until the judgment was satisfied. Having refused to do this, he was committed for contempt. In sustaining the statute, the decree, and the sentence, the court[89] wrote: "The legislature has seen fit to provide a creditor with a direct remedy for the collection of his just debts. . . . To compel the judgment debtor to obey the order of the court is not imprisonment for debt, but only imprisonment for disobedience of an order with which he is able to comply."

The court found little difficulty in disposing of the contention that this particular judgment debtor was beyond the reach of such a decree because his salary was paid by the national government. "It is true," the opinion stated, "that the wages of a federal employee cannot be garnisheed, but once his wage has been paid to him a state is not prohibited from ordering him to apply a portion of such income towards the payment of his just debts. . . . The argument that the imprisonment . . . will result in interference with the federal agency which employs him cannot be sustained. Certainly his federal position does not exempt him from imprisonment for crimes. . . . It is equally clear that it does not give him the privilege to disobey with impunity the orders of a state court." Of course this issue can be carried to the federal Supreme Court.

Freedom of Expression. Unable to entice the plaintiff's employees to join the International Association of Machinists, an A. F. of L. affiliate, the defendants, none of whom were employees of the plaintiff, picketed his garage to force him to accept a closed shop agreement. In refusing an injunction, the Illinois appellate court, second division, held[90] that

[89] Reeves v. Crownshield, 8 N.E. (2d) 283 (April, 1937). Since the New York constitution contains no specific guarantee, the case was argued on the due process clause. Hence it is none too reliable a precedent for other states.

[90] Schuster v. I.A.M., Auto Mechanics Lodge No. 701, 12 N.E. (2d) 50 (Dec., 1937).

peaceful picketing not only is lawful, but is protected by the guarantee of freedom of expression. "It is a matter of common knowledge," the opinion stated, "that many of our well-known industrialists and large employers of labor almost daily condemn in the public press the alleged iniquities of organized labor. Costly means of publicity are available to them and they utilize their own publications. . . . Yet when a labor union in a modest way, and utilizing perhaps the only means available which it can afford, seeks to present by signs carried on the person of one or more of its members the truth concerning an employer who refuses to recognize or deal with the union, it is strenuously urged that the employer is entitled to . . . prohibit the display of such signs in front of his place of business. . . . What inalienable right has an employer who is unfair in the eyes of organized labor to the favor of the continued patronage of its members and friends?" This opinion is indicative of a "new day." Only a few years ago, picketing, even though peaceful, was illegal in Illinois.

Prices, Wages, and Hours of Labor. In New Hampshire, a taxicab company is a "common carrier" and is subject to rate regulation.[91] In keeping with the general trend, a California district court of appeal held[92] that prices for barber services cannot be regulated by law even at the request of eighty per cent of those following the trade. Although conceding that the minimum prices so set were reasonable, it held that the ordinance was passed in the interest of those regulated rather than of the general public, and added: "We take it that without evidence of proper findings of fact by a competent fact-finding body . . . a legislative body should go no further, in declaring the existence of a condition of emergency which depends for its existence on the truth of certain facts, than a court can go in taking judicial notice of a general factual condition."

The Tennessee court[93] sustained a statute forbidding the sale of merchandise at less than cost plus the expense of handling when the nature of the transaction is not disclosed to the customer. The judges concluded that the statute "is not a price-fixing law," since "its object is to prevent deception of the public and to prevent practices which tend to injure competitors." In castigating the California legislature for passing a similar statute, a district court of appeal, in a case[94] which was decided on other issues, decried the modern tendency "to encroach upon the rights of citizens with experimental laws . . . , extending paternal control over private business . . . with the theory of a present emergency." It stated in no uncertain terms that it stands ready to hold the act unconstitutional.

[91] State v. Guertin, 193 A. 237 (June, 1937).
[92] *Ex parte* Kazas, 70 P. (2d) 962 (July, 1937).
[93] Rust v. Griggs, 113 S.W. (2d) 733 (March, 1938).
[94] Balzer v. Caler, 74 P. (2d) 839 (Dec., 1937).

The Montana constitution was amended in 1936 to provide: "A period of eight hours shall constitute a day's work in all industries, occupations, undertakings and employments, except farming and stock-raising; provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever in its opinion a reduction will better promote the general welfare. . . . " In State v. Safeway Stores,[95] the court concluded that even without the help of this amendment, a statutory forty-eight-hour week for employees engaged in mercantile undertakings in the larger cities is valid. If this decision is sustained by the federal Supreme Court, where it must now go, it will be a landmark in the interpretation of the Fourteenth Amendment.

Equality Before the Law. A provision that "the General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens" prevented Arkansas from exempting disabled veterans from license fees.[96] The requirement that "all laws of general nature shall have a uniform operation" prevented California from authorizing longer jail terms in counties maintaining penal farms.[97]

Miscellaneous Decisions. In Pennington v. Stewart,[98] the Indiana court held that a statute abolishing suits for alienation of affections is not contrary to the guarantee that "every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law," since "property" as used in this section "means something which one has the right to possess, enjoy, and dispose of—the right and interest which a man has in lands and chattels." It did not pass judgment upon the remainder of the statute, abolishing actions for seduction, breach of promise to marry, and criminal conversation.

In Hart v. City of Beverly Hills,[99] the court stated: "At the present time . . . the government—federal, state, and municipal—is continually reaching its tentacles into the field of private domain in an endeavor to wrest from the citizenry their hard-won constitutional guarantees of freedom of life, liberty, and the right to possess property. . . . *These rights are in fact inherent in every natural person, and do not depend on constitutional grant or guaranty.*" (Italics are the court's.) The latter statement, quoted from Cooley, is reminiscent of the days when the doctrine of natural law prevailed in its purer form, untrammeled by the necessity of linking it with a written document. One judge dissenting,

[95] 76 P. (2d) 81 (Jan., 1938).

[96] Edelmann v. City of Fort Smith, 105 S.W. (2d) 528 (May, 1937).

[97] People v. Lewis, 77 P. (2d) 249, & People v. Yalo, 77 P (2d) 251 (Cal. App., March., 1938).

[98] 10 N.E. (2d) 619 (Oct., 1937).

[99] 73 P. (2d) 1227 (Cal. App., Dec., 1937). On June 1, 1938, the state supreme court sustained this ordinance in a case that has not yet been reported.

the majority invalidated an ordinance prohibiting auction sales of household goods in residence districts.

V. FISCAL POWERS

Taxation. The 1936 session of the Kentucky legislature adopted a graduated income tax which has several interesting features. Persons only part of whose income is subject to taxation in Kentucky are allowed only a corresponding proportion of the personal exemption. National banks not being subject to the act, state banks likewise are granted exemption. All public officers, including judges who held office at the time of the act's passage, are subject to the tax. Because of their personal interest in the outcome, all seven members of the court refused to sit in the cases contesting its validity, and the governor appointed a special court of seven practicing attorneys. They unanimously held that an income tax is not a tax on property, and hence is not subject to the uniformity provisions of the state constitution, and (one judge dissenting) that state banks can be granted exemption in order to permit them to compete on equal terms with national banks.[100] Rejecting Evans v. Gore,[101] and the still more peculiar ruling in Miles v. Graham,[102] a bare majority held that judges are not exempt from the tax in spite of the constitutional provision that "salaries of public officers shall not be changed during the terms for which they were elected." "The constitution," they wrote,[103] "deals with their compensations as compensations and not as exemptions of public officials from any tax that is levied on any other citizen of Kentucky." Stating that "Evans v. Gore has not found favor in the state courts," the Delaware court[104] reached a similar conclusion under its constitution.

Tax Exemption. Formerly, efforts of Georgia towns to attract new industries by promising several years of exemption from taxation were frustrated by the constitutional provision that "all laws exempting property from taxation . . . shall be void." In 1924, this was amended to permit exemption by special vote. Norris was defeated in his effort to assert his promised tax immunity against Union City, because he relied upon a gentlemen's agreement with the town authorities without ratification by the electorate.[105] Even those who have followed the required procedure with meticulous care may find their coveted special

[100] Reynolds Metal Co., v. Martin, 107 S.W. (2d) 251 (June, 1937). Appeal dismissed for want of a substantial federal question, 302 U.S. 646 (Nov., 1937).

[101] 253 U.S. 245 (1920). [102] 268 U.S. 501 (1925).

[103] Martin v. Wolfford, 107 S.W. (2d) 267, 271 (June, 1937).

[104] Du Pont v. Green, 195 A. 273 (Oct., 1937).

[105] Norris v. Town of Union City, 191 S.E. 105 (April, 1937).

privilege attacked under the due process and equal protection clauses of the federal Constitution.[106]

New Jersey, like most states, grants exemption from taxation to property owned by the state or its local governments. In 1933, this exemption was partially waived, state-owned parks being returned to the assessment rolls. In an opinion[107] which would seem slightly academic, this was held to violate the provision that "property shall be assessed . . . under general laws . . . by uniform rules," since "property of a class—park property—is not subject to taxation unless it be owned by the state. To select the property of the state for taxation and exempt property of municipal corporations identical in its use . . . is to set up an arbitrary classification."

Confiscatory Taxation. The Kentucky court, taking a simple grant of power to the legislature to levy excise taxes, has reached the conclusion that it "forbids the imposition of an excise tax which amounts, in effect, to confiscation of the taxpayers' property or the suppression of a legitimate occupation." In keeping with this doctrine, it invalidated a tax of seven cents a quart on ice cream because the business was unable to absorb this tax and still make a profit, or add it to the selling price without reducing its sales "to a point where a profit cannot be made."[108] However, when manufacturers sued to recover such taxes paid under protest, they were required to prove that "the amounts they seek to recover do not include collections made by them from their customers. . . . To hold otherwise . . . would allow [the manufacturer] to take money wrongfully paid into the treasury . . . by another through himself acting as collector and leave the actual payer of the tax with a bare cupboard."[109]

Spending. Stating that "the question of the necessity for the exercise of eminent domain is one primarily, and almost exclusively, addressed to the legislative branch, while the question of whether or not the use to which the proposed condemned property be put is a public use or purpose, is one to be determined by the judiciary," the Kentucky court[110] sustained the use of public funds in carrying on a low-cost housing project. The Mississippi court[111] went a step further, upholding the right of a city, with state financial aid, to construct and lease to others a wearing apparel manufacturing plant. It added that if the city desired to do so, it could operate the plant. Protesting against the expansion of "the vague

[106] See this REVIEW, Vol. 31, p. 679.

[107] State v. Mercer County Board of Taxation, 193 A. 555 (July, 1937).

[108] Martin v. Nocero Ice Cream Co., 106 S.W. (2d) 64 (March, 1937).

[109] Shannon v. Hughes and Co., 109 S.W. (2d) 1174 (June, 1937). Two judges, dissenting, felt that the money should be refunded with no questions asked.

[110] Spahn v. Stewart, 103 S.W. (2d) 651 (March, 1937).

[111] Albritton v. City of Winona, 178 So. 799 (Feb., 1938).

and general phrase 'due process of law' . . . beyond its literal meaning of 'due procedure,'" it concluded: "We must not permit ourselves to be subjected to the tyranny of symbols. The due process of law provisions of our constitutions do not enact Adam Smith's concept of the negative state. . . . We must not be influenced by vague notions of natural law. . . . This state, in comparison with others, has few such enterprises, and it has long sought in vain to procure them by offering them special inducements, e.g., exemption from taxation. The legislature has determined that the public interest . . . requires the adoption of another method for procuring them, to wit, municipal ownership."

In the Mississippi case, a dissenting justice insisted: "The majority opinion drives a steam shovel through our constitution. . . . The state could take over all property and business of every kind. . . . We would have a commonwealth of serfs instead of freemen—parasites instead of patriots. . . . This is not a case of stretching the constitution to meet new conditions, but it is a case of breaking it." Apparently he believes that only the national government, with its Fourteenth Amendment and its Supreme Court, stands between his state and chaos.

Our governments have been notoriously niggardly in caring for those who have been injured in their service. However, when a Vermont deputy sheriff was murdered by a person then under arrest and in his custody, the legislature made a special grant of $3,000 to his wife and child. Justice Slack felt that this violated the provision that "government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community." Stating, "my sympathies are with the petitioner, but, in my opinion, the law is not," the justice concluded that "the claim would have been just as meritorious if he had been killed by a wild beast or in an automobile accident." The other judges, however, felt that the appropriation had been made to meet a moral obligation, and sustained it.[112]

Oklahoma has decided to lure the tourist trade in a more scientific manner, establishing a state travel and tourist bureau with a full-time publicity director. When the latter sued to collect his salary, the court held[113] that the enterprise constitutes a legitimate use of public funds.

The North Carolina constitution provides: "No . . . municipal corporation shall contract any debt . . . nor shall any tax be levied or collected . . . except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein." Recent decisions that the maintenance of hospitals for the indigent sick constitutes a "necessary

[112] Gross v. Gates, 194 A. 465 (Oct., 1937).
[113] Helm v. Childers, 75 P (2d) 398 (Jan., 1938).

expense"[114] proved but a flash in the pan, the court having returned[115] to its earlier view that "the building, maintenance, and operation of public hospitals is not a 'necessary expense.'" The dissenting justices commented: "The law as now declared by the court is such that it is lawful to incur an expense in building jetties in the sea to protect the property of summer cottages on the seashore . . . ; playgrounds and public parks to preserve the health of the well to do are necessary, while a hospital . . . is not. This . . . creates an inconsistency that operates to the disadvantage of those who are most in need of the ministering care of a progressive democratic government committed to Christian principles, and it ought not to be."

Contesting Appropriations. In State *ex rel.* Jensen v. Kelly,[116] the South Dakota court invalidated an appropriation act at the request of the governor suing as a taxpayer. The court ruled: "A taxpayer need not have a special interest in an action or proceedings nor suffer special injury to himself to entitle him to institute an action to protect public rights." Similar rulings in Iowa[117] and Tennessee[118] were less significant because municipal, rather than state, funds were involved. Many other such suits were entertained during the year, but passed without contest.

Oklahoma has provided, in substance, that every officer of any city who shall direct the payment of any money of the city in settlement of any claim known to such officer to be in pursuance of any unauthorized, unlawful, or fraudulent contract, and every person having notice of the facts, with whom such contract shall have been made, or to whom such money shall be paid, shall be jointly liable to the city for *double the amount* of such sums of money so paid, to be recovered at the suit of the proper officers of the city, or of any taxpayer. This statute was applied, in a taxpayer's suit, to the city commissioners who had purchased land for a public airport without first publishing a notice of intention or including the purchase price in the budget.[119]

[114] See this REVIEW, Vol. 30, p. 710.
[115] Palmer v. Haywood County, 193 S.E. 668 (Nov., 1937).
[116] 274 N.W. 319 (June, 1937).
[117] Abbott v. Iowa City, 277 N.W. 437 (Jan., 1938).
[118] Soukup v. Sell, 104 S.W. (2d) 830 (May, 1937).
[119] Dowler v. State *ex rel.* Prunty, 66 P. (2d) 1081 (Feb., 1937).

Constitutional Provisions Governing State Borrowing. The power to incur public debts is one which may have a vital influence on all governmental services. Since borrowing is often the easy way out of a difficult financial situation, the state's credit must be jealously guarded against abuse by the unscrupulous, the inefficient, and the over-ambitious. As a result of their experiences during the nineteenth century, most of the states in this country placed constitutional restrictions upon the use of the state's credit. But despite limitations many states have contracted large debts during the past twenty years, and several of them have been embarrassed by debt problems. Within the past four years, Arkansas and North Carolina have drastically curtailed the legislative borrowing power, while Pennsylvania voters, in 1935, refused to approve a revision of their constitution which would have increased greatly the legislature's power to incur debts. Perhaps, then, it will be of interest to review the constitutional provisions on this point as they exist at the present time.

The accompanying table is an exhibit of the constitutional provisions touching on the more important uses of state credit as of January, 1937. In the discussion that follows, these provisions will be explained, analyzed, and evaluated.

PROVISIONS OF STATE CONTITUTIONS LIMITING STATE BORROWING

State	*Citation: Art. and Sec. of Const.*	*Limitations on the Electorate*	*Limitations on the Legislature*	*Exceptions to Limitations on the Legislature*
		Code: Authorization of loan by voters requires: C.A. — constitutional amendment; Ref.—referendum; Int.—provision for tax to pay interest.; Pay.—provision for repayment.	Code: N.L.—no limit; N.B.—leg. may not borrow: Int.—leg. must levy tax to pay interest; Pay. — leg. must levy tax for repayment.	Code: 1—To cover casual deficits; 2—To refund; 3—To repel invasion; 4—To suppress insurrection; 5—To defend state.
Ala.	IV, 93, 99; XI, 213; XIII, 253; XX; XXI	C.A.	N.B.	1 ($300,000), 2, (3 and 4 by ¾ vote)
Ariz.	IX, 5, 7	C.A. (vote limited to real prop. taxpayers)	N.B.	1 ($350,000), 3, 4, 5
Ark.	X, 6, 9–11, 16; XII, 12	Ref.	N.B.	1, 2, 3, 4, 5
Calif.	IV, 22, 31; XII, 13; XVI, 1	Ref.; Int.; Pay. (75 years)	$300,000	3,4
Colo.	XI, 1–4	C.A.	N.B.	1 ($100,000), 2, 3, 4
Conn.		No provisions	No provisions	
Del.	VIII, 3, 4	Leg. borrows	¾ vote each house	1, 2, 3, 4, 5

State	*Citation: Art and Sec. of Const.*	*Limitations on the Electorate*	*Limitations on the Legislature*	*Exceptions to Limitations on the Legislature*
Fla.	IX, 6, 10	C.A.	N.B.	2, 3, 4
Ga.	VII, 3, 4, 5, 8, 12, 16	C.A.	N.B.	1 ($500,000), 2, 3, 4, 5. ($3,500,000 to pay pub. school teachers)
Idaho	VIII, 1, 2; XII, 3	Ref.; Int.; Pay. (20 years)	$2,000,000 plus certain debts	3, 4, 5
Ill.	IV, 18–20	Ref.; Int.	N.B.	1 ($250,000), 3, 4, 5
Ind.	X, 5, 6; XI, 12	C.A.	N.B.	1, 2, 3, 4, 5
Iowa	VII, 1–4; VIII, 3	Ref.; Int.; Pay. (20 years)	N.B.	1 ($250,000), 3, 4, 5
Kan.	XI, 5–8; XIII, 5	Ref.; Int.; Pay. (when due)	$1,000,000	3, 4, 5
Ky.	Secs. 49, 50, 157a, 176–178	Ref.; Int.; Pay. (30 years)	N.B.	1 ($500,000), 2, 3, 4, 5
La.	IV, 2, 12; VI, 16, 22	C.A.	N.B.	2 (limited), 3, 4
Me.	IX, 14, 15, 17	C.A.; 4% Int.; 15 year maturity	$2,000,000 plus $36,000,000 for highways	3, 4, 5
Md.	III, 34	Leg. borrows except for vets. bonus	N.L.; Int.; Pay. (15 years)	
Mass.	XLVI, 2, 3; LXII, 1–3	Leg. borrows	¾ vote each house	3, 3, 5 and tax antic. loans
Mich.	X, 2, 10–14, 20	C.A. (vote limited to property owners and spouses)	N.B.	1 ($250,000), 3, 4, 5
Minn.	IX, 5, 7, 10, 14a, 16; XIV; XVI, 1, 4, 5	C.A.	N.B. (except $75,000,000 for highways; ¾ vote required)	$250,000; 3, 4, rural credits; various specific exceptions
Miss.		No provisions		No provisions
Mo.	IV, 44–46, 48, 49; XII, 25	C.A.	N.B.	1, and emergencies ($250,000 each year), 2
Mont.	XIII, 1–4; XX, 12	Ref.; Int.; Pay. (when due)	$100,000; Int.; Pay.	3, 4
Neb.	III, 21; XIII, 1, 3	C.A.	N.B.	1 ($100,000) 3, 4, 5
Nev.	VIII, 9; IX, 3, 4	C.A.	1% ass'd. val. prop.; Int.; Pay. (20years)	3, 4, 5; contracts for preservation natural resources
N.H.		No provisions		No provisions
N.J.	I, 20; IV, 6	Ref.; Int.; Pay. (35 years)	$100,000	3, 4, 5

State	*Citation: Art. and Sec. of Const.*	*Limitations on the Electorate*	*Limitations on the Legislature*	*Exceptions to Limitations on the Legislature*
N.M.	IX, 7–9, 14, 16; XXI, 3	Ref. (limited to 1% ass'd. val. prop.); Int.; Pay. (50 years)	N.B.	1 ($200,000), 4, 5
N.Y.	VII, 1–4; VIII, 9; IX, 4	Ref. (and approval of Leg.); Pay. (50 years)	N.B. (except $300,000,000 to remove grade crossings)	3, 4, 5; to suppress forest fires; tax antic. loans
N.C.	V, 4	Ref.	⅔ amount debt reduced previous biennium	1, 2, 3, 4; tax antic. loans to 50% revenues
N.D.	XII, 182, 185	C.A.	$2,000,000 (except for lending on real est. and $10,000,000 for state enterprises; Int.; Pay. (30 years)	3, 4, 5
Ohio	VIII, 1–4; XII, 4, 6, 11	C.A.	N.B.	1 ($750,000), 2, 3, 4, 5
Okla.	I, 4; X, 4, 15; 16, 23–25	Ref.; Int.; Pay. (25 years)	N.B.	1 ($400,000) 3, 4, 5
Ore.	XI, 6, 7, 8; XI-a-XI-d	C.A.	15% ass'd. val. prop. for specified purposes	3, 4, 5
Pa.	IX, 4–7, 9, 16, 17, 19	C.A.	N.B.	1 ($1,000,000), 2, 3, 4
R.I.	IV, 13	Ref.	$50,000	3, 4, 5
S.C.	X, 6, 11	Ref.; (⅔ majority); Int.; Pay. (40 years)	N.B.	1
S.D.	VIII, 13; XIII, 1–3, 11, 13–18	C.A.	$100,000; ½% ass'd. val. prop. and ⅔ vote for rural credits; Int.; Pay. (10 years)	3, 4, 5; to provide funds for coal, cement, and electric enterprises
Tenn.		No provisions		No provisions
Tex.	III, 49–51a	C.A.	N.B.	1 ($200,000), 2, 3, 4, 5
Utah	III, 3; XIV, 1, 2, 5, 6; VI, 31	C.A.	1½% ass'd. val. prop.	3, 4, 5
Vt.		No provisions		No provisions
Va.	XIII, 184, 184a, 185	Ref. (limited to 1% val. taxable real estate)	N.B.	1, 2, 3, 4, 5
Wash.	VIII, 1, 2, 5; IX, 5; XXVI, 3	Ref.; Int.; Pay. (20 years)	N.B.	1 ($400,000), 3, 4, 5
W.Va.	X, 4, 6	C.A.; Pay. (not less than 20 years)	N.B. (except $50,000,000 for roads)	1, 2, 3, 4, 5
Wis.	VIII, 3, 4, 6, 7, 10	C.A.	N.B.	1 ($100,000), 3, 4, 5
Wyo.	XVI, 1, 2, 6, 9	Ref. (limited to 1% ass'd. val. taxable prop.)	Amount tax revenues for current year	4, 5

I

For purposes of analysis, we may divide the states into three groups according to the method used to regulate state borrowing. States in the first group have constitutional provisions which forbid the incurring of debts, with certain minor exceptions. This means that each project involving borrowing must be authorized by a constitutional amendment, with such formality and delay as that procedure involves. In these states, the voters are duly warned of the seriousness of the proposed step by the fact that it involves a change in the organic law of their state. In some states with the "amending habit," however, the solemnity of the procedure has been greatly reduced, and constitutions have been cluttered up with many provisions authorizing specific debts.

States in the second group have constitutions which require that every law authorizing borrowing shall be submitted to a popular referendum. Here the people still have the final decision, but the procedure is not so elaborate as in the first case. Here, too, the real weight of the restrictions may depend on the extent to which the electorate is accustomed to the referendum procedure.

The third group is composed of those states in which the legislature exercises the borrowing power without any immediate check by the electorate. This situation may result from either of two conditions. In the first place, the constitution may not mention the subject of debts at all, in which case the legislature derives its power by application of the generally accepted constitutional principle that the legislature has all lawmaking powers not denied to it in the constitution. In the second place, the constitution may impose such a general limit on the borrowing power of the legislature that for all practical purposes that body may be said to exercise control of the debt. Obviously it is impossible to lay down any definite principle for determining when the limit is so liberal as to place the significant and effective control of debts in the hands of the legislature. Perhaps the most practical test would be to determine, on the basis of present conditions, whether the legislature has the power to contract a substantial additional debt before being checked by the constitutional limit.

Using this test for determining the states which should be placed in the third group, we arrive at the following classification:

There may be some question concerning the classification of Nevada and Utah, but, all things considered, it seems best to put them in Group III. South Carolina is placed in that group in the teeth of constitutional provisions to the contrary. The legislature and the courts of that state, between them, have almost completely nullified those provisions.[1] Ar-

[1] Cf. 36 *Statutes of S.C.* 670; Briggs v. Greenville Co., 137 S.C., 288 (1926); State v. Moorer, 152 S.C. 455 (1929).

LOCATION OF THE "EFFECTIVE" BORROWING POWERS OF THE STATES

In the Electorate		In the Legislature
I	II	III
By Constitutional Amendment	*By Referendum*	
Alabama	Arkansas (since 1934)	(Arkansas before 1934)
Arizona	California	Connecticut
Colorado	Idaho	Delaware
Florida	Illinois	Maryland
Georgia	Iowa	Massachusetts
Indiana	Kansas	Mississippi
Louisiana	Kentucky	Nevada
Maine	Montana	New Hampshire
Michigan	New Jersey	(North Carolina before 1936)
Minnesota	New Mexico	North Dakota
Missouri	New York	Oregon
Nebraska	North Carolina (since 1936)	South Carolina
Ohio	Oklahoma	South Dakota
Pennsylvania	Rhode Island	Tennessee
Texas	Virginia	Utah
West Virginia	Washington	Vermont
Wisconsin	Wyoming	

kansas and North Carolina are named in two groups because they have recently shifted from the third to the second, after contracting large debts. It is necessary to keep this in mind when considering the effects of limitations on borrowing.

From this classification, we see that the states are fairly evenly divided among the three methods of limitation. There seems to be no definite geographical or other logical basis for the grouping, although four of the six New England states give their legislatures unlimited powers. With the exception of Delaware, only Southern and New England states give their legislatures an absolutely free hand in borrowing. North and South Dakota and Oregon are in Group III because they have liberalized their constitutions after once having rigid provisions on this point.

At the other extreme are those states in which every bond issue requires a constitutional amendment. This procedure varies somewhat from state to state, but it quite generally requires that the legislature approve the proposed amendment by a two-thirds vote before submitting it to the people. In some states, the proposed amendment must be passed at two consecutive sessions of the legislature. Pennsylvania probably has greater constitutional obstacles to borrowing than any other state in the Union, for in addition to the above two requirements, her constitution

may not be amended more often than once in five years.[2] Arizona and Michigan have recently limited the vote on bond propositions to taxpayers.

There is considerable variation in the specific rules governing voting in those states which authorize borrowing by referendum. In some states, the vote must be at a general election, while in others special elections are allowed. As a rule, a simple majority of those voting on the proposition is sufficient to decide the question, but a few states require the approval of a majority of those voting for governor or members of the state legislature. South Carolina, which would be in this group if her constitution were observed, has a provision requiring the approval of two-thirds of those voting on the question. The only bond proposition put before the people of this state since the World War—a ten-million-dollar issue in 1924—was defeated.

An interesting example of the difficulties that may develop with debt limitations is afforded by Iowa. It was proposed to have the state issue up to one hundred million dollars in highway bonds to repay county bonds and to pay for road construction. The proposition was submitted in the form of a constitutional amendment, and after the legislature had passed it twice, the people approved it in 1928. The validity of the amendment was contested, and in 1929 the state supreme court held that the amendment was invalid.[3] The procedure was started again, and after the proposition had passed the legislature a second time in 1931, a special election was called to vote on the matter. But before the time for the election the matter was again brought before the court, which held that the proposed amendment was not in the form required by the constitution, in that it covered more than "one object or purpose."[4] After more than five years of fruitless effort, the project was abandoned and the legislature proceeded, in a different way, to accomplish most of the ends for which the amendment had been designed, without either a referendum or an amendment.

A Maryland case provides an interesting commentary on the exact location of the borrowing power under certain circumstances. In 1922, the legislature desired to pay a bonus to World War veterans, but thought it best to have an expression of opinion on the matter from the people. A law was passed providing for the bonus and a nine-million-dollar bond issue to raise the funds, to become effective only when approved by

[2] Cf. Pa. constitution, Art. 18; Armstrong v. King, 281 Pa. 207 (1924); and Taylor v. King, 284 Pa. 235 (1925). Before 1924, this provision was disregarded and amendments were approved every two or three years, i.e., in 1909, 1911, 1913, 1915, 1919, and 1923.

[3] State v. Executive Council, 207 Iowa 923 (1929).

[4] Mathews v. Turner, 212 Iowa 424 (1931).

the people.[5] Before the time for the election, the matter was brought before the state supreme court, which held the act unconstitutional on two grounds: first, the people having delegated the power to make laws to the legislature, the latter could not re-delegate the power back to the people; second, the people had prescribed the manner in which laws should be enacted, and the legislature could not prescribe any different method.[6]

II

Thus far, this discussion has dealt with the location of the borrowing power. But other points are covered by constitutional provisions. As will be noted from the above table, there are 17 constitutions which require the levying of taxes to pay interest on the debt and 19 which require that provisions be made for paying the debt. It is doubtful whether these provisions have ever been very effective, and with the decline in the use of the property tax by states they have even less meaning. The property tax rate may be arrived at by adding up several rates for specific purposes, but it is hardly feasible to levy income, license, and excise taxes in this fashion. In several cases, constitutional provisions state that the law levying a tax for interest is irrepealable so long as any of the bonds remain outstanding. This may introduce an undesirable rigidity into the tax system and hamper the legislature in its effort to meet difficult financial situations.

In most cases, the provisions regarding repayment of the debt are in such vague and general terms as to kill any significance that they might otherwise have. These provisions can never mean as much as they imply on the surface, for a state can always divert funds to debt redemption which would otherwise be spent for capital outlays, and then contract new debts for the capital expenditures. Further, there is always the danger that the maximum term allowed for repayment may become the usual term. But the provisions are nevertheless worth while, for they have *some* effect in preventing irresponsible legislatures from interfering too much in the financial affairs of the third and fourth generations, and in making the present generation more keenly aware of the true burden of a large debt. A limit of not more than 30 years is probably desirable for state debts; certainly a limit of more than 40 years can have little significance. The Maryland limit—quite low at 15 years—is one of the most effective in the country. The West Virginia constitution has a unique provision requiring that "the payment of any liability other than that for the ordinary expenses of the state shall be equally distributed over a period of at least twenty years."[7] Regardless of the conditions which dictated this provision, it obviously has no economic justification.

[5] *Laws*, 1922, Ch. 448.

[6] Brawner v. Supervisor, 141 Md. 586 (1922).

[7] Art. X, Sec. 4.

Every one of the constitutions which impose restrictions on borrowing has certain exceptions for emergencies. Thus, most of them allow borrowing to cover casual deficits. This is desirable, since such deficits occur in every state at some time or other. In many cases, however, specific limits are set to such borrowing, and these limits were made to fit the conditions of fifty or sixty years ago when the constitutions were adopted. The amounts which may be borrowed are usually $500,000 or less. In view of the size of modern state budgets, these amounts are infinitesimal; the limit should be stated as a per cent of revenues.

Provisions allowing the refunding of debts are both necessary and dangerous. They are necessary in order to allow a state to work out of an embarrassing financial situation or to take advantage of lower interest rates. They are dangerous because they may be relied upon to extend the debt as a substitute for raising the funds needed for repayment.

The necessity for the war exceptions is obvious. South Carolina is the only state with limitations on the borrowing power which does not except loans for defense. One of the problems connected with war exceptions is the question of when they may be invoked. When the United States is at war, does this automatically put every state at war with the enemy nation and thus sanction the use of those powers? It seems to be the general opinion that it does so, and during the World War several states authorized war loans and gave governors wide powers in the use of proceeds. Some of the uses resorted to were: provision for dependents of soldiers, purchase of equipment, loans to farmers, aid to the United States, etc.[8] Such grants of power may be abused.

The war exceptions usually include borrowing to "suppress insurrection." The interpretation of this phrase may also offer difficulties. During the recent depression, at least four states attempted to invoke this power to justify borrowing for relief purposes. Legislatures were called into special session to "allay the present widespread public discontent and social unrest . . . to prevent disaster . . . and to defend the state." Asserting that the "public peace, order, tranquillity, and safety are seriously affected and endangered, and the processes of orderly government itself imperiled," and that "acts of insurrection have occurred," the legislatures voted for bond issues. In Michigan, contrary to the wishes of the governor, these "incipient insurrection" bonds were submitted to a vote of the people, who rejected them by a large majority.[9] In Kansas, the act of the legislature was brought before the courts, but the issue of bonds was sustained on other grounds, so that a consideration of the point in ques-

[8] Cf., for instance, *Public Acts of Michigan*, 1917, Act No. 18, and Montana *Laws*, 1918, Ch. 21.

[9] *Commercial and Financial Chronicle*, Vol. 138, p. 3131.

tion was not necessary.[10] In Colorado, however, other grounds were not considered sufficient to justify the issuance of bonds, and the court was forced to consider this point. In a fiery opinion, the court doomed the proposed law and stated that constitutional provisions were not to be put in abeyance by a simple declaration of the governor. "Such a construction, once adopted, breaks the barrier, and future legislatures, protected by the precedent, might pile up mountains of debts on future generations."[11] The court implied that the power in question could be invoked only after insurrection actually existed, and then only to provide force with which to quell it.

The Washington case was different. There the legislature authorized the sale of bonds for unemployment relief without a vote of the people.[12] The court, when the matter was presented to it, held that under a reasonable interpretation the term "suppress insurrection" would include actions designed to *prevent* insurrection. It further held that under the conditions then existing, the issuance of bonds for unemployment relief might reasonably be expected to prevent insurrection. The court specifically condemned the idea that the legislature would have to wait until violence or bloodshed actually developed before it could act to suppress insurrection. There was a strong dissenting opinion.[13]

In addition to the above provisions, which deal with the direct debts of the states, there are other constitutional provisions which govern the indirect use of the state's credit. Thus in 43 instances states are forbidden to lend or pledge their credit to or for the benefit of individuals, private business enterprises, and/or local governmental units. Twenty-five constitutions forbid state ownership of stock in private corporations. These provisions are necessary to prevent the evasion of debt limits by indirection; they reflect the states' disastrous experience with railroad, canal, and banking companies during the nineteenth century. Within the past ten years, several states have been employing "authorities" or other similar arrangements in order to borrow indirectly. It is quite probable that these devices will eventually have to be brought under constitutional limitations.

It would seem that the ordinary provisions regarding borrowing and the creation of debts should cover the situation when a state contemplates assuming a debt which has already been created by some private agency or local governmental unit. But the courts have been so narrow and legalistic in their interpretation of constitutional provisions in cases of this kind that 19 states have included in their constitutions separate

[10] Kansas *Laws*, Sp. Sess. 1933, Ch. 98; State v. State Highway Commission, 138 Kan. 913 (1933).

[11] *In re* Senate Resolution No. 2., 94 Col. 101 (1933).

[12] *Laws*, 1933, Ch. 65.

[13] State v. Martin, 173 Wash. 249 (1933).

provisions to cover this particular situation. These usually forbid the state, quite plainly and definitely, to assume the debts of any individual, private corporation, or local unit. In some instances, donations, grants, or gifts to any of these are forbidden. With many local governments in financial distress and appealing to the states for aid, these provisions have received considerable attention in many states in recent years. Various methods of evasion have been attempted. A common practice has been to provide that highway commissions shall assume local road bonds or service them from state highway funds. Another is for the state to reimburse counties and other local units for highway expenditures. Although this is a separate story in itself, we may note here that, even in the face of specific prohibitions, the courts in many states have been exceedingly lenient, even to the extent of rendering decisions which were directly contrary to any reasonable meaning of the words of the constitution.[14] However, there have been a few decisions to the contrary.[15]

III

How effective are the different methods of limitation? Obviously, there are no clear-cut, definitive standards of measurement, and space forbids a detailed statistical study of the scant data which are available. Elsewhere, however, I have developed an index which is of some use in measuring debt burdens in relation to taxpaying ability.[16] It involves a statement of the per capita debt as a relative of the average for the whole country, and then a comparison of this relative with a similar relative covering per capita income, wealth, retail sales, and output of primary industries. When this index is applied to the net debts of states as reported by the Bureau of the Census in 1932, the results are as shown at the top of the next page.

Arkansas and North Carolina are included in Group III, as already explained. The inclusion of Arkansas, with an index of 1,095.5, considerably distorts the average of this group, but even with Arkansas excluded the average is 170.5. It is interesting to note the intensity of debt problems of the states in the different groups. Alabama, Louisiana, and West Virginia undoubtedly have heavy loads for their resources and feel the burden of debt service. But aside from these, none of the states in Groups I and II can be said to be really embarrassed by their debts. In Group III, however, Arkansas defaulted in 1933 and now faces an exceedingly

[14] Bush v. Martineau, 174 Ark. 214 (1927); Tapley v. Futrell, 187 Ark. 844 (1933); Amos v. Mathews, 99 Fla. 1 (1930); Carleton v. Mathews, 103 Fla. 301 (1931); Mitchell v. Lowden, 123 N.E. 566 (Ill.); Baker v. Hickman Co., 164 Tenn. 294 (1932); Road District No. 4 v. Allred, 123 Tex. 77 (1934).

[15] Cf. Crick v. Rash, 190 Ky. 820 (1921); Berry v. Fox, 112 W.Va. 513 (1932).

[16] B. U. Ratchford, "High Correlation Between Index of State and Local Debts and Bond Defaults," *The Annalist*, Nov. 22, 1935, pp. 717–718.

THE BURDEN OF STATE DEBTS IN RELATION TO ABILITY TO PAY: 1932

I		II		III	
Alabama	356.8	California	90.5	Arkansas	1,095.5
Arizona	50.1	Idaho	79.3	Connecticut	0.3
Colorado	35.1	Illinois	115.7	Delaware	51.3
Florida	1.7	Iowa	39.3	Maryland	94.9
Georgia	45.5	Kansas	66.1	Massachusetts	59.3
Indiana	8.2	Kentucky	56.3	Mississippi	262.8
Louisiana	361.4	Montana	84.0	Nevada	55.0
Maine	191.6	New Jersey	55.7	New Hampshire	71.9
Michigan	55.6	New Mexico	207.6	North Carolina	490.8
Minnesota	77.0	New York	128.4	North Dakota	56.3
Missouri	170.0	Oklahoma	38.1	Oregon	173.4
Nebraska	3.6	Rhode Island	105.3	South Carolina	535.6
Ohio	5.4	Virginia	84.0	South Dakota	136.6
Pennsylvania	40.1	Washington	28.0	Tennessee	355.0
Texas	12.4	Wyoming	108.4	Utah	65.7
West Virginia	341.3			Vermont	148.7
Wisconsin	2.1				
Averages	103.4		85.8		228.3

heavy burden of debt service for the next 40 years at least. On one or two occasions, Mississippi experienced considerable trouble in meeting her payments. Tennessee has been, and still is, faced with serious problems in the management of her debt. North Carolina's heavy debt greatly intensified her financial troubles during the depression. These considerations seem to point toward the conclusion that legislatures—in certain states at least—are more likely to borrow to excess than are the voters.[17]

As another test of the effectiveness of the different methods of debt limitation, we may note the results of popular votes on questions of borrowing. A survey of data in the *Commercial and Financial Chronicle* (including its *State and Municipal Compendium*) and Moody's *Governments* volumes indicates that from 1918 through 1936 the voters in 33 states were asked to decide on questions involving the issuance of almost four billion dollars in state bonds (excluding propositions submitted a second

[17] A study of state debts as of 1915, when they were only a small fraction of present-day figures, showed a substantially similar result. In that study, the states were placed in seven groups. While this classification differs from that given above, the groups were such that comparisons may be made with some degree of validity. Two groups, covering 24 states, were comparable to Group I above; these had per capita debts of $2.32 and $2.80. Two other groups included 15 states, and were comparable to Group II above; they had per capita debts of $2.94 and $3.83. Three other groups, comprising 9 states, were comparable to Group III above and had per capita debts of $4.65, $5.70 and $5.87. Commonwealth of Massachusetts, *Bulletins for the Constitutional Convention, 1917–18*, Bulletin No. 15 (Boston, 1918), pp. 578–580.

time without a change in the result). These included both amendments and referenda. Of the total amount, $2,657,013,000 was approved, while $1,298,554,000 was defeated. The results for selected individual states are:

	Approved	*Defeated*
	(000 omitted)	
New York	$794,000	$ —
Illinois	265,000	—
Missouri	165,600	—
Iowa	122,000	—
West Virginia	85,000	—
Louisiana	138,000	—
Pennsylvania	185,000	238,000
Michigan	84,000	85,000
California	229,500	578,000
New Jersey	221,000	14,000
Alabama	77,000	65,000
Colorado	19,000	74,000

Highway and bridge bonds were most frequently voted upon, with $1,371,500,000 approved and $277,500,000 rejected; veterans' bonus and loan funds come next, with $482,200,000 approved and $68,500,000 defeated; while bonds for unemployment relief showed $363,622,000 approved to $40,000,000 rejected. In 1924, the largest amount of bonds was at stake; $241,000,000 was approved and $607,000,000 was rejected; 1928 ranked second, with $143,400,000 approved and $328,000,000 rejected. The peak of bond approvals came in 1925, when New York State authorized $400,000,000 for the elimination of grade crossings. Other years in which large amounts were approved were: 1920, $326,500,000; 1922, $252,450,000; 1930, $269,600,000; and 1933, $235,000,000. Unemployment relief was an important factor in 1933, but in the other years the principal purposes of borrowing were highways and veterans' bonus and loan funds.

From these data it appears that the voters have defeated the issuance of about one-third of all state bonds submitted to them. This does not necessarily mean that all the bonds defeated by the voters would have been issued if the legislatures had had full power to borrow; it is quite possible that the latter would have been more deliberate in actually authorizing borrowing than in submitting the question to the voters. But it is a fair assumption that if there had been no constitutional limits, some, and probably a considerable proportion, of the bonds rejected by the people would have been issued and sold, and that state debts would have been larger than they now are.

Other testimony to the restraining power of the popular vote is afforded by the lengths to which legislators sometimes go to avoid it. Sev-

eral times it has happened that legislators, in states requiring a referendum on bond issues, have taken great pains to devise a scheme whereby they might issue bonds without submitting the question to the people. If the courts held the method unconstitutional, the next step was usually either to drop the matter or to attempt to devise an alternative method which, it was hoped, would win the approval of the courts—submission of the question to the people being exceptional in such cases.[18]

As a final observation on the effectiveness of limitations, we may note what happens when trouble develops. When an unhampered legislature has engulfed the state in a burdensome debt, the tendency is for the people to place strict limits on the powers of the legislature. That was true during the nineteenth century, and more recently has been true in Arkansas and North Carolina. Evidently there is a widespread opinion that the voter is more to be trusted on the matter of borrowing than is the legislator. This may well be, since the voter is not beset by questions of short-sighted expediency in getting or holding votes. A sure way for the politician to gain favor is to give the taxpayer much and tax him little. Borrowing offers the means of doing this for a time.

It should be noted, finally, that rigid or severe debt limits stimulate evasion. The methods used by many states in recent years to evade constitutional limitations on borrowing constitute a story far too long to be related here. Suffice it to say that many states have contracted, or are servicing, large debts in spite of constitutional provisions designed to prevent such actions. Thus Colorado, Florida, Iowa, Kansas, Montana, New Mexico, South Carolina, and Texas, among others, have large quasi- or contingent debts which are paid from state revenues, although they were not contracted according to the method prescribed by the constitution. Pennsylvania attempted to create such a debt by setting up a "general state authority" and authorizing it to borrow. The Pennsylvania supreme court, in 1936, held this method unconstitutional, but in 1937, by a unanimous decision, reversed itself and upheld this form of debt creation.[19] More recently it has been proposed that Pennsylvania create a quasi-public corporation to borrow fifty million dollars for the construction of a toll highway; the purpose of this is quite clearly to evade the restrictions which prevent the state from itself borrowing the money.[20]

IV

In conclusion, it should be noted that in several constitutions the provisions relating to debts are sadly in need of redrafting. Louisiana has

[18] Cf., for instance: *In re* Senate Resolution No. 2, 94 Col. 101 (1934); Johnson v. McDonald, 97 Col. 324 (1935); Stanley v. Townsend, 170 Ky. 833 (1916); State Budget Commission v. Lebus, 244 Ky. 700 (1932).

[19] Kelly v. Earle, 320 Pa. 449 (1936); *Legal Notes on Local Government*, II (1937), 292–293.

[20] *New York Times*, Mar. 28, 1937, sec. 2, p. 7.

enacted so much legislation by means of constitutional amendments that her constitution resembles a volume of consolidated statutes. The provisions relating to borrowing are scattered, vague, and ambiguous. Very much the same is true of the Minnesota constitution, which contains numerous exceptions and gives the legislature very wide powers along certain lines. The Maine constitution is badly cluttered up with amendments which have been added, one after another, instead of replacing earlier provisions. The constitutions of the two Dakotas are badly in need of clarification and more definitely restrictive provisions. The Oregon constitution permits the legislature to incur a ruinous debt for certain purposes if it should so decide.

Besides these, there are those states in which the legislature is under no restraints except such as are imposed by its own will and by the refusal of investors to buy bonds. Of these, Mississippi and Tennessee urgently need strong constitutional restrictions, for their legislatures have shown that they may not safely be intrusted with unlimited borrowing power. Maryland has fared passing well, thanks to the provision requiring the payment of debts within 15 years; if this provision had been absent, the story probably would have been different. As for Connecticut, Delaware, New Hampshire, Massachusetts, and Vermont, the legislatures have shown the ability to exercise the borrowing power wisely, and there is no reason to recommend that they be shackled by constitutional limitations at this time. A discussion of the exact provisions which should be embodied in a state constitution in order to provide an effective control of borrowing will be undertaken later; at present, it must await the completion of a detailed study of the ways in which existing provisions are being evaded.

B. U. RATCHFORD.

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Reorganization—A Question of Executive Institutions. Proposals for administrative reorganization continue to cause controversy. Politicians, academicians, and administrators line up for and against—with men of intelligence and experience on both sides. The temperature of the academicians sometimes rises as much in disputation as does the temperature of their lay brethren. Why such heated disagreement among scholars and scientists? The explanation is suggested by the fact that dissension in the ranks of the academicians is most pronounced when the "dogma of administrative reform" or the "science of management" (as you prefer) is discussed in the abstract. When specific proposals are discussed, differences of opinion among academicians are less extensive and less dogmatic.

I

We often forget that all organization is for a purpose. The forms and devices of organization are means to an end. They cannot be appraised apart from their use and purpose. The academic dispute over principles of organization frequently reflects an unidentified disagreement over objectives. Until these different tacit assumptions as to purpose are discovered and agreement is reached, differences of opinion in the ranks of academicians are as inevitable as in the ranks of politicians and administrators.

We are also prone to forget that organization is necessarily related to a specific situation. That is, it is an organization *of* something as well as *for* a purpose. Obviously, the function of an administrative structure is to organize people to work together; it implies a plan of authority, duty, and division of labor. But in public affairs, an organization is not concerned with its members alone; it is an organization of forces in the entire governmental system, perhaps in the entire society. The roots are as important as the branches, even though not so obvious, and the ultimate fruitfulness depends not only upon inherent vitality but also upon suitability to terrain and climate.

Controversy most often centers about proposals to organize the work of government under a chief executive. We are familiar with the characteristic devices: (1) a reasonably small number of departments, (2) under single executive officers, (3) responsible to the chief executive, (4) with "staff agencies" to supervise institutional activities, and (5) with boards and commissions employed only for quasi-legislative and quasi-judicial duties. Recent proposals extend to the creation of "general staffs" as well as "auxiliary staffs" and restrict the use of boards and commissions still further to quasi-judicial duties.

Professor White's apt term for this scheme of organization, "integra-

tion," suggests the answer to the question as to when the devices are appropriate. The purpose is obviously unity in organization. When unity is desirable on the executive side of government, the forms of "integrated" organization are appropriate. When unity is not desirable, an integrated organization is inappropriate. To come quickly to the point of this article: Unity is both necessary and desirable on the executive side of most governments in the United States. The general trend must be toward unified executive institutions if government is to continue to be both orderly and progressive. However, there are situations in which unity on the executive side of government is not particularly desirable, and there are governments in which the office of chief executive is not a good capstone for the administrative structure. Let us consider first the case for unified administrative organizations, and following that the exceptions to the general rule.

II

The President's meassage to Congress on January 12, 1937, submitting the proposals of the Committee on Administrative Management, and the reports of the Committee, raise the issues implicit in administrative reorganization in concrete form.[1] Is the integration which would result from these proposals desirable or is it not?

Unity is desirable, and the proposals are wise, for two chief reasons. One is the reason advanced by the committee, the need for "administrative management"—the need for more effectiveness and responsibility in *executing* public policy. The second and more important reason is the need for more intelligence in *forming* public policies.

The big question in government is what to do? Successful administration is in large part conditioned upon the wisdom with which policies are conceived, and it is the possibility of getting more intelligence into public plans at the vital points that makes the recent proposals attractive. It is what the proposals would make possible at the top rather than what they would do at the bottom of the administrative structure that gives them their primary appeal.

Congress needs presidential leadership in legislation. Every legislative body works best with a concrete proposal before it. This is elementary to anyone who has ever sat upon a committee. Although a poor proposal is better than none, a good proposal is better than a poor one. Congress not only requires proposals, but, to be effective, requires proposals from the executive. Leadership within Congress is inadequate in the sense that

[1] The reader's familiarity with the proposals of the President's Committee on Administrative Management is assumed in this essay. See President's Committee on Administrative Management, *Report, with Special Studies*, submitted to the 74th Cong., 2nd Sess., in accordance with Public Law No. 739.

it cannot fashion a comprehensive program or persuade the members to adopt it. "Congress" is well named; its members are representatives of sections with differing interests and points of view, and they do not acquire a national outlook or national prestige by surviving to committee chairmanships or by winning the battle for the speakership. The legislative process accentuates as often as it modifies divergent views. The recurrence of blocs and their ability to play both ends against the middle in legislative trading reveal the essential disunity within Congress. It is dependent upon the presidency for leadership.

Presidential leadership is not only a necessity, but a fact; and we readily identify the notable legislation of the past generation with the leadership of the presidents. But what of the quality of that leadership? It leaves much to be desired. It is as whimsical as an adolescent youth following his changing fancy. It varies not only from one president's term to another; it also varies in direction within the terms of a single president. The point is that we have leadership by *presidents* at times, but the *presidency* is not yet an institution. It has traditions; but it lacks essential organization and supporting personnel. Traditions alone are not enough.

If the presidency is to be adequate today, it must be institutionalized. It must be implemented with an organization and with a personnel. It must be the channel through which the thinking and experience of the entire executive side of government are pooled and brought to bear upon the problems of government. The President must be the spokesman for the "administration" in the real sense of the word, not merely the interpreter of his own fancies. The President in times of his greatest power has come to represent the public. This is a truism. It is the real basis of his legislative influence. He must also come to represent and interpret the experience of government in action if the leadership of the presidency is to be adequate.

What can be done to foster such a development of the presidency? The answer, already suggested, is to create a comprehensively integrated administrative structure for which the President, the constitutional "chief executive," is responsible. The President's responsibility for the national government would then be complete. At present it is fragmentary. The President's legal responsibility would also be suitably *personified* in the forms of subordinate officials who as a group exercised all the executive powers and carried all the executive responsibilities not exercised or carried directly by the President. In politics, where face to face contacts and word of mouth assurances are so important, it is fully as necessary to personify responsibility as it is to make it public and legal.

It is essential, as suggested by the Committee, to bring the functions of the independent regulatory commission into the executive departments and to extend the civil service upward. Without comprehensive respon-

sibility, the plan of an integrated organization loses much of its attractiveness in the national government; for comprehensive responsibility is the most probable check to arbitrary, unbalanced, or uninformed executive leadership. The reorganization proposals are obviously tied to the personnel proposals; for without a permanent corps of qualified higher officials in each of the major divisions of the administration, the legal responsibility of the President will not be implemented. The flow of information and ideas from the bottom to the top of the national administration will be choked by a transient personnel. The great advantage of the integrated organization in the national government will be to subject the heads of the executive departments to the tutelage of their subordinates, and to subject the President in turn to a balanced and consistent pressure from all branches of the administration.[2] Such is not the case today.

It must be recognized that within an administration as vast and diverse in functions as that of the government of the United States there will always be divided counsel. Experience, expertness, and even professional training do not make for unanimity of opinion. The experts in the numerous divisions of the national administration can with good conscience and considerable zeal give Congress contradictory advice; and Congress, lacking unity itself, finds it difficult to reconcile the conflicts. The advantage of an integrated administration is that it increases the probability that experience will be pooled in formulating proposals and that there will be some meeting of minds among the experts in the government. Congress still preserves its power to consult directly with permanent officials; but the chances are greatly increased that each group of specialists will have related its program to the entire program of government. Their thinking should be more trustworthy for having been fertilized at an early stage by contact with other experts in the administration.

The situation is somewhat similar with reference to the groups which bring pressure to bear on the administrative officials of the government. The attempt of special interests to exercise control over particular divisions of the national administration is well known. It is hard to find a commission or bureau without its lobby. Drawing the activities of the government into an administration under a common chief would check

[2] The provision for six administrative assistants to the President is, in the opinion of the author, not a very important part of the proposals of the President's Committee. If the administration is not unified in its fundamental organization from the ground up, these six liaison officers cannot give it unity. They would perhaps be useful, but would be too much outside the main stream of administrative activity and too uncertain as to their status and function to be able to assist very greatly in integrating the administrative process.

rather than aid undue influence by administrative lobbies. Unity in the administrative structure and comprehensiveness in the chief executive's responsibility would be barriers to special influence. If experience in the states is any guide, the control of special interests over public administration tends to be greater when functions are independently organized than when they are integrated with the rest of the administrative structure.

What effect would this plan of organization have upon existing institutions? One effect would be to revitalize the cabinet. With some of the most far-reaching and controversial of the national government's activities conducted by new "executive agencies" or "independent commissions," it is little wonder that the cabinet, composed of heads of the executive departments, should be chiefly of historic interest in the national government. The cabinet has apparently lost vitality steadily in the past quarter-century. Its contribution to government at present seems to be *nil*. Bleeding an anemic patient is no longer recommended to restore his vigor; nor has the creation of numerous independent agencies done anything to check the debility of the cabinet.

A second effect of the plan of organization would be to enhance the office of president at the expense of the personal influence of the incumbent. The office would be more important, probably for the first time, than the personality of the President. With the executive functions of government exercised by the cabinet departments, and with each secretary backed by a permanent corps of higher officials, the President would be in a different position from his position today. Acute problems would not go unnoticed, even in prosperous times. Plans could not mature uncriticized, even in "emergencies." It would be difficult to favor a few functions of the government at the expense of others. Stodgy presidents would find themselves constantly prodded and impetuous presidents would find themselves advisedly warned. There is a continuity to experience which if brought to bear upon any individual in public life will tend to stabilize his outlook. A president is no exception, and the plan under consideration would greatly increase the probability that the President would use his influence with due consideration for the lessons of experience.

Some comments on the proposals of the President's Committee show fear that curtailment of the President's patronage will weaken his leadership in Congress. This is too narrow a view of the function of patronage. "Senatorial courtesy" might also be termed blackmail, and patronage is as much a means of maintaining the peculiar influences of the Senate as it is an aid to the executive in legislation. The very existence of patronage on the present scale must tempt even the most conscientious mind to turn slightly sour at times in the hope that it may be properly sweetened.

It is significant that opposition to curtailing patronage in the higher posts comes, not from the President, but from Congress.[3]

The presidency is potentially our greatest political institution. Seventy-five years ago, it was the means of preserving a minimum of unity in the nation. In every great crisis it has been the pivot for action. We shall turn to the President again in every great crisis of the future. Fortunately, when catastrophe has fallen in the past, the President has usually been adequate. But separatism in the national government has increased greatly in the last twenty-five years, and the President is no longer at the focus of the entire administration. In a day when it is uncertain whether "five judges of the Supreme Court will come down heads or tails," and when it sometimes appears doubtful whether a "chief executive" will come down at all, it is high time to look to institutionalizing the presidency. If society had an inherent unity, we should not worry; but as the need for unity has increased, so has natural or spontaneous unity diminished. Governmental action of one sort or another seems to be necessary continually. Under these circumstances, it is both a sensible and a conservative step to provide for some unity within the national administration, to the end that conflicts and inconsistencies in policy shall tend to be minimized, not maximized.

Would the plan under consideration give rise to arbitrary use of regulatory powers? Some fear this, but probably unnecessarily. There seems to be no danger in this direction, for a number of reasons. One is the secure hold of Congress on the statutory mandate. The President has discretionary powers of a constitutional character in only a few fields, chiefly military affairs and foreign affairs. The regulatory functions of the federal government stem from acts of Congress, and all discretion exercised under these acts must be within the terms of the acts. Furthermore, powers can be, and usually are, conferred directly upon departments or bureaus rather than upon the President. This practice tends to emphasize the President's general supervisory responsibility rather than to give him broad discretion. Nothing in the plan of organization proposed would jeopardize the generic power of Congress or increase the power of the President to act arbitrarily. Congress may still define the regulatory policy as precisely as it chooses, and Congress still holds the purse strings.

A second reason why arbitrary regulation need not be feared is the scope and character of judicial review in finally determining the meaning of statutes. The power of the courts to control administrative acts will not in any way be reduced by administrative reorganization.

[3] Both the Mead bill (House) and the Byrnes bill (Senate) specifically deny the President power to extend the classified services to positions filled by and with the advice and consent of the Senate. Cf. H.R. 8277, 75th Cong., 1st Sess., and S. 2970.

To be sure, members of Congress would probably feel it illogical to launch new regulatory programs of a vague character and turn them over to the executive departments to administer. A damper on this sort of legislation, however, would be clear gain. Nothing has been accomplished in the past by entrusting ambiguous policies of broad scope to independent commissions that could not have been accomplished by beginning with definite policies of more limited scope and entrusting them to the executive departments. Statutes authorizing regulation are never adequate to start with; revision is always necessary, and it is amazing how long a time revision is delayed. It is nothing for an independent commission to wait a couple of decades for authority, the need for which was obvious not long after the commission was set up. Regulatory agencies are not apt to get needed legislation without the support before Congress of the President. As the administration is at present organized, whether or not the President pays any attention to the claims of the independent regulatory commissions need depend only upon his personal predilection. He is not responsible for their success or failure. They are not a part of his official family, and he has no routine public contacts with their personnel. If the regulatory functions were brought into the administration, it would not only be proper but necessary for the President to interest himself in the success of these enterprises, and necessary legislation would probably be secured more promptly. The net effect should be to render it practicable to make haste slowly in undertaking regulation. Not even a reform party should feel it necessary to crowd all of its ultimate objectives into the statutes in the first few months of power.

A third reason why regulation through the executive departments need not arouse fears of arbitrary regulation is that such regulation has not been arbitrary in the past. The record of those executive departments which have regulatory functions compares favorably with the record of the commissions on this score. Indeed, the efforts of a president to control the "independent" commissions is liable to do more damage to impartiality than any official responsibility for the work of the executive departments. Public responsibility is much to be preferred to back-stairs politics, and the arrangements suggested by the Committee on Administrative Management would probably increase the independence of the persons exercising purely judicial functions in regulation.

Would the reorganization proposed by the Committee on Administrative Management make the office of president too powerful? Would it tempt the President to be a dictator? There would seem to be nothing to fear in this direction. Dictators establish themselves by destroying legislative and representative institutions. The power of Congress is not imperiled by the reorganization proposed, nor is the President's power to coerce Congress increased. The proposals embody a drastic reduction

in the President's patronage; so that his power to bribe members of Congress would be greatly reduced. The President's control of the military forces is a constitutional power which would not be affected by the administrative reorganization. But most important of all is the fact that the President's ability to control Congress depends upon his representative character. When the President has a popular following in the country, and when members of Congress are convinced that he has it, he has a following in Congress as well. When he loses his popular support, he loses the bulk of his congressional support. When we think of powerful presidents, we think of those who have exercised positive leadership in Congress. A president out of touch with the sentiment of the country does not stand a ghost of a chance of coercing Congress. Unifying the administration under the presidency would not jeopardize the integrity of our national legislature.

The Committee on Administrative Management, as its title suggests, has been concerned principally with the effect of reorganization upon the governing process at the bottom. It has attempted to provide for better management—economy, coöperation, promptness, accountability, competence, morale, and all the other factors that contribute to effectiveness in highly organized effort. These are worthy objectives, and neither the Committee nor the President is to be censured for emphasizing their importance. Moreover, it is perhaps too much to expect either the Committee or the President to present the other half of the story—the effect of an integrated administrative structure upon the governing process at the top. But of the two considerations, the latter is the more significant. The great value of administrative reorganization along the lines lately at issue is the ultimate effect that it would have upon the presidency in implementing the office and in giving stability and intelligence to the leadership of the man who is chief executive.[4]

[4] The Committee's preoccupation with "management" is nowhere more obvious than in its proposals regarding "staff agencies." The chief executive is in reality a chief legislator, and the Committee is a bit optimistic in expecting to interest him currently in the routine processes of management. If the indefatigable Cleveland, burning the midnight oil in the interest of administrative reform, could not cope with the inevitable mountain of details, it is futile to expect a president of this generation to give any routine supervision to the processes of institutional management. The attempt to make these processes direct wards of the President is liable to leave them orphans still.

If it is desired to give weight to fiscal management, it would seem to be more effective to entrust it comprehensively to an established department with the traditions and prestige of the Treasury. Major questions of policy would be brought to the President's attention as readily as now, and the Secretary of the Treasury could give considerably more interest and attention to the lesser questions than can the President. Cf. A. E. Buck's proposals in the Committee's *Report, with Special Studies*, p. 147 *ff.*

III

An administrative structure integrated under the chief executive is desirable in the national government. But it does not follow that it is universally desirable. The office of president is a solid foundation upon which to build executive institutions. The office has important constitutional as well as statutory functions. The President has a powerful veto. His appointing power is broad and his removal power relatively generous. Tenure runs from four to eight years, and the President is increasingly the nation's representative. The office of governor in many states lacks these characteristics. It has few functions not dependent upon statutory grant, and the legislatures have not been generous. The appointing power is frequently curtailed by the existence of legislative or elected officers, and the removal power is strictly limited. The tenure may be short and an incumbent may not be eligible to succeed himself. If perchance the governor has only a suspensory veto, his office shrinks still further, and if he is traditionally the representative, not of the state, but of a single faction or a single machine within one or the other of two parties, there is not a great deal upon which to build. To "integrate" only a part of the administrative process in departments for which a weak governor is legally responsible promises little in the way of more effective executive leadership or more intelligence in forming public policies. The office of chief executive must have some strong features, or an integrated administrative organization will gain little from it. If constitutional reform is a prerequisite to administrative reform, it cannot be overlooked.

A second condition requisite to effective use of the "principle of integration" in organizing the administrative process is a system of dealing with personnel which places at least a little emphasis upon ability, and provides for some continuity of tenure. The point is not that there tends to be more ability or longer service among employees in a disunited administration; but rather that a corps of permanent higher officials is necessary in order to mobilize at the top the experience of an organization. The political chiefs of departments cannot do this alone. Without the corps of permanent higher officials, such an organization would tend to be integrated more in form than in fact.

A third condition affecting the suitability of a unified administrative structure is the prevailing opinion regarding the several functions of government. If people generally look with equanimity upon amateur work in police, public works, and tax assessment, but insist upon professional work in education and health protection, there may be little to gain from

Closer association with the Treasury is also to be considered for the Civil Service Commission (or Administrator) if it is desired to put the weight of an institution behind control processes. It is not reasonable to expect a Civil Service Administrator to get very much of the President's time or attention.

a united organization. It may be wise to put up with the expense and friction which are so often by-products of privileged positions until a general demand begins to develop for professional work in all fields.

The character of governmental functions has a bearing also upon the means by which unity on the executive side of government may be achieved. This is not to say that some functions "should be taken out of politics" while others should not. Nor does it imply that politicians appointed to "independent" commissions are different from those appointed to individual executive posts. Rather, the point is that not all activities require the same degree or the same type of current supervision in order that they may be effectively integrated with the administrative process.

Some functions are relatively stable as to volume of activity, cost of operation, and the technology employed, while others are not. Functions differ in the extent to which methods may be dissociated from basic questions of policy. In some cases, it is possible by statute to delimit objectives and define powers with considerable precision, while in others it is not. Consequently, administrative units differ in the extent to which their work gives rise to new questions of broad policy and in the extent to which they affect, or are affected by, other governmental functions. Some require a tight rein and a vigilant rider; others need only an occasional word or a touch at the crossroads.

Integration is not necessarily inconsistent with decentralization.[5] What is essential is that the line of responsibility and authority be kept clear, so that when significant problems of broad consequence arise anywhere in administration, they will be carried immediately and forcefully to the attention of the chief executive through normal, official, *personal* channels.

Summarizing the argument, it runs as follows: Integrated administrative organization is generally desirable to give effect to intelligent executive leadership, which is in turn necessary to permit most effective legislative action and to counteract the centrifugal forces in our unrepresentative representative bodies. This is the situation in the national government. But to create effective executive institutions of an integrated character, there must be a reasonably strong office of chief executive on which to build. Formal organization comes alive only in its personnel, which must be professional in order to achieve the main benefits from the

[5] The use of the corporate device to organize operations within major departments may be regarded in some instances as a type of functional decentralization. Subject to unitary supervision, such corporations would not destroy the lines of authority and responsibility essential in an integrated administrative structure. Unsupervised corporations, corporations with vague functions, and corporations with supervisory responsibility for subordinate administrative units, are a "different breed of cats."

integrated scheme of organization. Executive unity does not require that all activities be subject to the same type or degree of current supervision. The question of administrative organization is not a question of management alone; it is a question of fostering the growth of executive institutions which will, in the conduct of public affairs, serve to engraft the stalk of human experience upon the stem of human desire.

GEORGE A. GRAHAM.

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Public Service—Occupation or Industry?—In the April issue of this REVIEW, Professor William E. Mosher, of Syracuse University, ably expounded the views of those students of public administration who hold that public service is, or should be, a distinct profession. It therefore seems desirable that a member of an opposing school of thought should present the other position.

The other school believes that public service is not a distinctive occupation or profession. In the terms of the labor economist and statistician, public service is, at most, a distinctive industry. Within that industry are a host of separate and distinct occupations. One who has had occasion to do minute, detailed work on classification of public positions, or on preparation of occupational statistics of the public service, is inclined to generalize that a large proportion of the occupations found in private enterprise are likewise found in the public service and that the public service has some occupations that are unique. Many substantially identical occupations are found in widely divergent industries, public or private, and among persons working on their own account without regular employers paying them salaries or wages. In dealing with the public service, it is therefore just as necessary as in dealing with private enterprise to draw the basic distinction between "industry" and "occupation."

The term "occupation," as used by the labor economist, covers any or all gainful pursuits. In a recent Census Bureau publication entitled *A Social-Economic Grouping of the Gainful Workers of the United States*, prepared by Dr. Alba M. Edwards, one of the leading authorities in the field, gainful workers are divided into the following broad social-economic classes and sub-classes, which are subsequently used for the analysis of the employees in each of the major industrial groups:

1. Professional workers
2. Proprietors, managers, and officials
   a. Farmers (owners and tenants)
   b. Wholesale and retail dealers
   c. Other proprietors, managers, and officials
3. Clerks and kindred workers
4. Skilled workers and foremen

5. Semi-skilled workers
   a. Semi-skilled workers in manufacturing
   b. Other semi-skilled workers
6. Unskilled workers
   a. Farm laborers
   b. Factory and building construction laborers
   c. Other laborers
   d. Servant classes

Although the relative importance of these several social-economic classes and sub-classes would be very different in the public service industry from what it is in private enterprise, it probably is true that every class and sub-class used by Dr. Edwards occurs in the public service, with the possible exception of wholesale and retail dealers. Public servants doing much the same work as wholesale and retail dealers are, in the public service, managers, and not independent business men.

Since hundreds, if not thousands, of distinctive occupations occur in the public service, it follows that great diversity exists in the knowledge, skills, and personal qualities required to perform the public work. This diversity is, in fact, so great that one is forced to question whether the likeness is not confined to the single fact that all are on a public pay-roll or receive fees for rendering a governmental service. Is it possible, on the basis of so narrow a bond, to develop any such thing as a profession of public service with a common body of knowledge, a common code of ethics, a common loyalty, and a common prestige?

To the Littauer School at Harvard I am indebted, not for recognition of a distinctive profession of public administration—nothing that I have read or heard about the Littauer School suggests that it has embraced such a philosophy—but for a new phrase which avoids that familiar difficulty with the words "profession," "science," "vocation," "trade," "calling," no one of which is alone sufficient to denote the desired thought. This new term is "fields of civilian competence." What I have gathered regarding the Littauer School is that, amid all the wholesome difference of opinion, there is an approach to agreement on the point that men trained for the public service must have their distinctive field of civilian competence, plus what the universities can give them in public administration. Somehow I have gathered the idea that the men connected with the Littauer School have the feeling that a great university like Harvard can be of more service to outstanding young public administrators by letting them come there to refresh and strengthen themselves in needed fields of civilian competence and to broaden their vision than by giving them work in the highly specialized narrow aspects of public administration. Much of that they can learn better in the service than in any university. Certainly the new work in journalism at Harvard is operating in this way; and my understanding is that the Littauer School will

operate similarly. Certainly its faculty represents diverse fields of civilian competence and does not connote any adoption of the idea that public service is a distinctive profession.

Physicians, lawyers, engineers, architects, foresters, educators, economists, statisticians, social workers, yes and even ministers of the gospel, in the public service, will hardly abandon their own distinctive bodies of knowledge, professional ethical codes, and loyalties to unite in a profession of public service. Neither, I take it, will the tiny city, with only enough money to pay one fair salary to one high grade employee, abandon the common practice of getting an engineer as city manager. Let it be clearly understood that the group to which I belong by no means contends that members of the professions just cited who have entered or are to enter the public service do not need to supplement their preparation for their particular field of civilian competence with some work in public administration. Quite the contrary. Schools of education, public health, and social service have long recognized this fact, and their curricula have for years contained courses in the administrative field. Some of the best, most practical educational work in public administration that I have seen is done by these professional schools. Just as statistics is best taught in the field of civilian competence where it is to be used, so it seems possible that public administration can be most interestingly and significantly taught when integrated with a field of civilian competence. Integration permits of a discussion of concrete administrative problems and cases and an escape from broad generalizations, many of which must be confined to the few common problems of overhead control and management.

One who has on occasion witnessed, or even participated in, the conflict in point of view between the professions with respect to public policy, and even with respect to general administration, can derive some pleasure from picturing efforts to make the different professions lie down together in an over-all profession of public service. Members of the military professions, for example, will scarcely see eye to eye with social workers on the needs of the country with respect to national defense and relief, and the proper distribution of public funds between the two. They cannot have common professional objectives, unless those objectives are stated in such broad, indefinite terms as the general welfare, which each profession can interpret in its own way.

The spiritual forces that motivate men's lives and lead them to select different fields of civilian competence with distinctive loyalties and objectives can hardly be unified, if indeed they can even be harmonized. Much could be said in favor of the contention that the country progresses more through the conflicts and the competition between fields of civilian competence than it could do through some dictator, running true to

form, killing off all contentious minorities and permitting to survive only those who conform to the narrow objectives of the dictatorial power.

I agree with Dr. Mosher in commending Dr. Leonard White's studies of the prestige of the public service. These studies showed the attitude of the man in the street toward government service in general, and incidentally indicated that the federal service stood much higher than state and municipal services—partly, I take it, because of the high prestige of certain of the national professional services. I feel reasonably sure that Dr. White regarded his studies as experimental sampling and as by no means exhausting the field.

No one, so far as I am informed, has actually studied what seems to me a far more significant question with respect to prestige, namely, how do certain professional, scientific, and technical bureaus of the national government rate in the minds of competent workers in the respective fields of civilian competence? How, for example, do the agencies listed in the column at the left below stand in the opinion of the professions placed opposite them in the right-hand column?

The United States Public Health	The medical profession
	The doctors of public health
The Bureau of Animal Industry	The veterinarians
The Bureau of Public Roads	The civil engineers
The Bureau of Agricultural Economics	The agricultural economists
The Forest Service	The foresters
The Reclamation Service	The engineers
The Office of Education	The educators
The Bureau of Labor Statistics	The labor economists
The Children's Bureau	The social workers
The Division of Research of the Federal Reserve Board	The economists specializing in money and banking
The Bureau of the Census	The statisticians
The Geological Survey	The geologists
The Bureau of Standards	The chemists
	The physicists
The Department of Justice	The lawyers
The Office of the Supervising Architect	The architects

Many of us contend that the attractiveness of a given branch of the public service depends far less on the attitude of the man in the street toward the public service as a whole than on the attitude of leaders in the respective fields of civilian competence toward the government agency engaged in the practice of that calling. In a very modest way, I have done some vocational guidance and placement work for students and others who are thinking of entering the public service. My advice runs all the way from "Don't touch it with a ten-foot pole," to "By all means get into it as soon as you have a chance." Part of the variation comes from the desires and ambitions of the individual. For example, if he wants to make

money, one has, except in rare instances, to advise him to keep out. More of the difference comes, however, from the nature of the job. Within the past few days, for instance, I congratulated a young Harvard man, highly commended to me by one of his professors, on what seemed to me his great wisdom in refusing a job as a finger-print classifier in the Bureau of Investigation of the Department of Justice, for which he had been certified as the result of having passed the civil service tests for Junior Civil Service Examiners. Nothing in that job would have exercised his mind. On the other hand, I advised him to accept a position in the research division of the Social Security Board if he should be certified there. I recall telling one young economist and statistician that an opportunity to work under Goldenweiser in the research division of the Federal Reserve Board was a rare privilege.

Recently I heard a complaint from a disillusioned young college man in Washington. "They are urging us young college men to enter the public service. So far as I can make out, the United States Government now has more promising young college men than it is able to use to advantage." Exactly why some teachers of political science harp on the need for college-trained men in the federal service and almost completely ignore the fact that thousands have entered the service since the passage of the Civil Service Act of 1883 is hard to understand. Can it be that in their minds "college-trained" is synonymous with "college-trained in general public administration" and does not apply to the scientific and professional men and women who have long made up a large and important part of the national service, many of them trained in specific branches of public administration? If they mean that political science by itself is not a field of civilian competence that has had a large market in the national service, the statistics, such as are available, will sustain them. Economics, sociology, social service administration, and statistics in the field of the social sciences have long been better entrance keys because of the nature of the duties involved. Engineering and the natural sciences likewise have been better keys. As a minor, and as a cultural subject, political science is of great value; but vocationally it needs to be combined with some other field of civilian competence.

Recently I attended a meeting where a distinguished professor talked on training for the public service, more particularly the national service. He never became more specific than the national service as a whole. Just as I was wishing I were elsewhere, the worst happened and the chairman called on me for discussion. I had to say that the term "the national service" seems to me an average conception, and that in my judgment little real progress can be made by thinking and discussing averages. Actual distributions, actual facts, are necessary; for the differences are generally more significant than the likenesses. When we know the actual facts, we

find existing situations varying all the way from the obviously bad to the excellent. Take, for example, the relationship between the government offices, on the one hand, and the professional schools and the university departments on the other. Doubtless, cases can be cited in which neither appears to know that the other exists. Other cases can be cited in which the relationship approaches hand-in-glove, as in the relationships between the Bureau of Animal Industry and the Schools of Veterinary Medicine, the Forest Service and the Schools of Forestry, the Public Health Service and the Schools of Public Health, the Children's Bureau and the Old Age Assistance unit of the Social Security Board and the Schools of Social Service Administration, and the Geological Survey and the departments of geology.

If students of public administration desire to discuss, not an over-all profession of public service, but a distinctive service of general administration comparable with the Professional Service, the Sub-Professional Service, the Clerical Administrative and Fiscal Service, and so on, as set up by the National Classification Act of 1923 for positions in the District of Columbia, that subject is sufficiently narrow and concrete for constructive discussion. It was, as a matter of fact, pretty thoroughly discussed by the classification staff of the Congressional Joint Commission on Reclassification, with a decision, unanimous as I recall, for the negative. It seems to me unfortunate that so many writings that are really applicable only to the question of the desirability of a general administrative service are so worded that they appear to relate to our public services as a whole. Proponents of the administrative service, to make their point, damn our public services as a whole and forget that we have already, through professionalization, many public agencies which competent foreign visitors view with genuine respect. If we are to increase general popular respect for the public service, we should, I think, stress what has been achieved through professionalization and not harp only on what is bad. Such great progress has been made since 1883 that many of the authoritative writings published prior to, let us say 1920, are now mainly of historical interest. What we need to consider are current facts and statistics. We need more of them.

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Organization of the Executive Branch of the National Government of the United States: Changes between December 1, 1937, and May 31, 1938.[1]

As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by execu-

[1] In the December, 1933, issue of this REVIEW, pp. 942–955, appeared a tabular review of the changes in major units of the national government between March 4

tive order under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

Advisory Committee for Federal Crop Insurance Corporation. Authorized by the Agricultural Adjustment Act of 1938, Public Act No. 430, 75th Congress, approved February 16, 1938. The Committee is to consist of not more than five members "experienced in agricultural pursuits." The compensation shall not exceed $10 per day each while actually employed.

Alaskan International Highway Commission. Authorized to be appointed by Public Act No. 564, 75th Congress, approved May 31, 1938, to coöperate with any similar agency of the Dominion of Canada in a study of a highway connecting the Pacific Northwest of the United States, British Columbia, the Yukon Territory, and the Territory of Alaska. The Commission is to consist of a citizen of Alaska, a member of Congress, and three citizens of the United States. The members are to be appointed for a term of two years and are to serve without compensation.

Coast Guard Personnel Board. Created by Public Act No. 419, 75th Congress, approved January 12, 1938, to recommend annually officers who should be retired or placed out of line of promotion. The recommendations of the Board are subject to review by the Commandant of the Coast Guard and the Secretary of the Treasury. The Board is composed of three commissioned officers of the Coast Guard designated by the Secretary of the Treasury.

Committee to Survey and Appraise Property and Reindeer to be Acquired for Natives of Alaska. Created by Interior Department Appropriation Act (Public No. 497, 75th Congress) approved May 9, 1938, for the purpose of determining property to be acquired under the provisions of the act of September 1, 1937 (50 Stat. L., 900). Consists of three members appointed jointly by the chairmen of the committees on appropriations of the Senate and House of Representatives. The sum of $25,000 was appropriated for expenses.

Federal Crop Insurance Corporation. Created by Title V of the Agricultural Adjustment Act of 1938, Public Act No. 430, 75th Congress, approved February 16, 1938, as an agency of and within the Department

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and November 1, 1933. Supplementary lists have appeared in the following issues: April, 1934: changes between November 1, 1933, and March 15, 1934; October, 1934: changes between March 15 and June 30, 1934; February, 1935: changes between June 30 and December 15, 1934; August, 1935: changes between December 15, 1934, and July 5, 1935; October, 1935: changes between July 5 and August 12, 1935; December, 1935: changes between August 12 and October 15, 1935; June 1936: changes between October 15, 1935, and April 15, 1936; October, 1936: changes between April 16 and July 31, 1936; August, 1937: changes between August 1, 1936, and May 31, 1937; February, 1938: changes between June 1 and November 30, 1937.

of Agriculture, to insure the wheat crop against losses due to unavoidable causes. The management is vested in a Board of Directors which is subject to the general supervision of the Secretary of Agriculture, and which is composed of three persons who are employed in the Department of Agriculture and who are appointed by the Secretary of Agriculture and hold office at his pleasure. The Secretary is authorized to appoint officers and employees of the Corporation without regard to the civil service laws and regulations. Authority is granted for an appropriation of $100,000,000 for subscription to the capital stock of the Corporation, but the appropriation for the year ended June 30, 1939, shall not exceed $20,000,000. Authority is granted also for an appropriation of $6,000,000 per year for the operating and administrative cost of the Corporation.

Joint Committee to Investigate the Tennessee Valley Authority. Created by Public Resolution No. 73, 75th Congress, approved April 4, 1938. Consists of five members of the Senate and five members of the House of Representatives to be appointed by the presiding officers.

National Emergency Council. Executive Order No. 7709-A of September 17, 1937, effective December 31, 1937, abolishing National Emergency Council, amended by Executive Order No. 7776 of December 27, 1937, to provide for continuance until June 30, 1938.

Mediterranean Fruit Fly Board. Created by Public Act No. 535, 75th Congress, approved May 23, 1938, to survey and report on the losses sustained in Florida from the campaign to eradicate the Mediterranean fruit fly. Consists of five members appointed by the Secretary of Agriculture. Each member will receive $10 per day when actually employed. An appropriation of $10,000 for expenses is authorized. The Board is to report not later than March 15, 1939; it shall cease to exist when its report is transmitted.

National Mortgage Association. Organized February 10, 1938, as a subsidiary of the Reconstruction Finance Corporation to make real-estate loans insured by the Federal Housing Administration under the provisions of Section 301 of the National Housing Act as amended by Public Act No. 424, 75th Congress, approved February 3, 1938. The Association has a capital of $10,000,000 and surplus of $1,000,000 supplied by the Reconstruction Finance Corporation.

Petroleum Conservation Division. Authorized to be established in the Department of the Interior by Executive Order No. 7756 of December 1, 1937, to administer the provisions of the act of February 22, 1935 (49 Stat. L., 30) as extended by Public Act No. 145, 75th Congress, approved June 14, 1937, to regulate interstate commerce in violation of state laws. This Division was established by the Secretary of the Interior March 14, 1936, by departmental Administrative Order No. 1054, but has never been recognized by an executive order. Federal Tender Board No. 1 was

created by Executive Order No. 7758 of December 1, 1937, to issue clearance certificates for interstate shipments of oil from Texas. This Board had been created by Executive Order No. 6980-C of March 1, 1935. Executive Order No. 7024-B of April 25, 1935, created Federal Petroleum Agency No. 1 as administrative and investigative agency for Federal Tender Board No. 1; this order is revoked by Executive Order No. 7759 of December 1, 1937.

Smithsonian Gallery of Art Commission. Created by Public Resolution No. 95, 75th Congress, approved May 17, 1938, to secure designs for a building for the Smithsonian Gallery of Art. The Commission consists of a member to be designated by the Regents of the Smithsonian Institution, the Secretary of the Smithsonian Institution, a member to be designated by the Secretary of the Treasury, the Chairman of the National Capital Park and Planning Commission, the Chairman of the Commission of Fine Arts, the Chairman of the Joint Committee on Library, the Chairman of the Committee on the Library of the House, and the Chairman of the Art Commission of the Smithsonian Institution. All members serve without compensation, but an appropriation of $40,000 for expenses is authorized.

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The Policies and Interests of Great Britain and Holland in the Far East. No traveller in Eastern Asia can fail to be impressed by the widespread alarm and hostility towards Japan's intentions and her economic penetration. This feeling is first to be encountered in Ceylon, where, despite the Singapore naval base, there is a distinct undercurrent of uneasiness among the Ceylonese political leaders. The attitude is much more pronounced in British Malaya, and becomes steadily stronger as one nears Japan. Sympathy for China is the dominant sentiment; but at the same time one encounters the belief that in the long run the Chinese may prove the more serious problem. A very important Dutch official typified this attitude when he remarked that he believed that Japan's ambitions in China would fatally overstrain her resources so that in a few years she would cease to be a menace, "but even after a couple of centuries the problem of the Chinese immigrants will be as serious as ever."

The situation in the Netherlands East Indies as regards the Japanese and Chinese is on the whole similar to that in British Malaya. In the Netherlands East Indies during the years 1929 to 1933, the growth of Japanese imports, particularly cottons and rayons, almost drove the Dutch and British textiles off the market save for the limited demand for the more expensive fabrics. In 1928, 25.6 per cent of the volume of cotton textiles came from Holland, 27.1 per cent from Great Britain, and 30.8 per cent from Japan. In 1933, the figures for the same three countries respectively were 4.4, 4, and 82.8 per cent.[1] The loss of Dutch trade was one of the principal reasons for the abandonment of the open door policy by the passage of the Crisis Import Ordinance of 1933. Tariff reductions have not been given to imports from Holland; but a comprehensive system of quotas reserves to them as large, and sometimes a larger, share of the trade than they formerly possessed. Despite the higher price of Dutch as compared with Japanese goods, the policy has had a certain measure of success. In 1934, for example, the import of cotton textiles from Holland increased to 7.3 per cent. In the same year, the import of Japanese cottons increased to 83.1 per cent at the expense of British and other textiles.[2] A secondary purpose of the quotas is to provide a bargaining power by means of which a larger share of the import trade can be offered to those countries which increase their purchases of East Indian exports. As in Malaya, Japan sells to the Dutch colonies far more than she buys from them, supplying them in 1934 with 31.87 per cent of

[1] A. Neytzell de Wilde and J. T. Moll, *The Netherlands Indies During the Depression* (Amsterdam, 1936), p. 54.

[2] *Op. cit.*, p. 54; L. B. S. Larkins, *Economic Conditions in the Netherlands East Indies, 1933–1935* (London, 1936), pp. 31–42.

their imports and taking only 3.9 per cent of their exports.[3] Negotiations have been conducted to lessen this unfavorable balance of trade, but so far without result.

Another phase of Japan's economic penetration has been the attempt to have her goods transported, handled, and distributed entirely by Japanese agencies and to oust the long-established machinery of shipping companies, importers, and retailers. Hitherto, the shipment of goods to Japan had largely been controlled by Dutch companies, the bulk of the importers were Dutch and other Occidental firms, and the great majority of the retailers were Chinese. The Japanese established excellent and frequent steamship services to the Dutch colonies and threatened to undersell the Dutch merchant marine. To counter this policy, coastal shipping was in 1935 reserved for Dutch ships, and many of the ports were closed to foreign shipping. Many of the ordinances imposing quotas contained a clause empowering the government to fix a percentage of the goods which the importers must have transported in vessels under the Dutch flag.[4] Hitherto it has not been necessary to use this discretionary power, since Dutch shipping companies have managed to hold their own by close coöperation with Dutch importers in the East Indies and with their buying agencies in Japan. The Japanese attempt to establish importing and retail firms in the colonies has been substantially defeated by requiring importers to obtain a government license for each shipment of goods subject to quota.[5] Since licenses were granted only to established firms, the trade has remained in the hands of mainly Occidental companies which have continued to dispose of their goods to their accustomed clientele of Chinese retailers.

The Dutch government is afraid that Japan may have in mind measures that are more simple and direct than economic penetration. The Japanese navy is believed to advocate a policy of expansion southwards rather than on the mainland of Asia; and Holland realizes that if this should occur she could not successfully defend her colonies. The prevailing fear and suspicion were shown by the nervousness in official circles in 1936 at the report that the Japanese fleet intended to conduct its maneuvers near the island of Celebes. So far as financial resources permit, the colonial air force, navy, and army have been strengthened. Ordinances have also been passed empowering the governor-general to assume almost dictatorial powers in the event of an emergency.

If attacked, however, the Dutch would have to rely on British and American aid. They therefore regard with great favor the completion of

[3] De Wilde and Moll, *The Netherlands Indies During the Depression*, p. 57.

[4] L. B. S. Larkins, *Economic Conditions in the Netherlands East Indies, 1933–1935*, pp. 52–53.

[5] De Wilde and Moll, *The Netherlands Indies During the Depression*, pp. 72–73.

the Singapore naval base and the strengthening of the British fleet. They fully realize that the security of British Malaya would be imperiled by a Japanese occupation of Sumatra or Java, and that the British sea route to Australia would be endangered by the occupation of any of the other islands of the East Indies. Owing to the geographical position of their possessions, the British and Dutch empires in Southeastern Asia must sink or swim together. The present American policy of granting the Philippine Islands their independence and withdrawing protection in 1945 will place the Dutch Empire in a very exposed position. Apart from the encouraging psychological effect which American withdrawal will have upon Japan, the Islands occupy a very important strategic position. They form a buffer only 61.4 miles south of the nearest Japanese island and 11.3 miles from Borneo. The Dutch share the general opinion in the Far East that the Filipinos are unlikely to survive successfully the combination of independence and the loss of the American market, and they do not expect the Philippine Republic to be of long duration. They comfort themselves with the hope that the present isolationist trend in American policy will be modified before 1945.

The Chinese problem in the Netherlands East Indies is far less serious than in British Malaya. The Chinese number only 1,250,000 as against 59,100,000 Indonesians, or slightly more than two per cent of the total population, while in Malaya they are 39 per cent. Moreover, they are disliked by the natives because of their superiority complex and their much greater business acumen. On the other hand, they are a power to be reckoned with since they control the retail and part of the importing trade, and their representatives hold the balance of power in the Volksraad and in the provincial, regency (i.e., district), and municipal councils. As in Malaya, they do not amalgamate with the Indonesians, but remain distinctively Chinese, even after several generations. The recent immigrants and many of the Chinese born in the Indies tend strongly to be Nationalists, and Chinese patriotism is stimulated by the schools and by the press. While the majority are interested only in business and are quite content to leave government to the Dutch, there is, as in Malaya, a considerable minority who wish to be nationals of China and at the same time enjoy all the privileges of Dutch citizenship. The Chinese government has supported this claim, and has also tried to strengthen its control by propaganda and by the activities of the Chinese consuls and of the branches of the Kuomintang which exist in the colonies. To assist the government in controlling the situation, there is, as in Malaya, a Bureau of Chinese Affairs which keeps in close touch with all Chinese movements and pays particular attention to the Chinese press and schools. The government has been unwilling to offend the Chinese or to jeopardize the growing export of sugar, timber, and petroleum to China

which it has been fostering; but at the same time it is resolved not to permit the creation of anything even remotely resembling an *imperium in imperio* in the Netherlands East Indies.

In British Malaya, Japanese economic penetration has perhaps unfairly but nevertheless inevitably aroused the hostility of the Western firms which had formerly controlled the market. The most spectacular instance has been the sale of cotton and rayon textiles, where the Japanese have displaced the British as the principal source of supply. During the quinquennium 1927–31, the average annual export to British Malaya was 59,002,000 yards from the United Kingdom and 45,795,000 yards from Japan. In 1933, the gross imports were 26,392,000 yards from the former and 126,939,000 yards from the latter. The failure of the Anglo-Japanese trade negotiations led in 1934 to the imposition of quota restrictions which were supplemented in the Malay States, though not in the Straits Settlements, by the erection of import duties of 10 per cent on British and 20 per cent on foreign cottons and rayons. In consequence, British manufacturers recovered a considerable part of their lost market: in 1936, the gross import was 38,635,000 yards from the United Kingdom and 67,524,000 yards from Japan.[6] Despite an active preventive service, it is estimated that an additional 7,000,000 yards of Japanese textiles per year are smuggled into Singapore.

The Japanese have also captured a large part of the carrying trade in rubber, and to a lesser extent tin shipments, from Malaya to the United States. In 1933, British ships carried 57 per cent and Japanese .3 per cent of the rubber shipped; but in 1936 the British transported 30 per cent and the Japanese 26 per cent. The Japanese own few rubber plantations, but buy from the producers at about one-fourth of a cent per pound more than their competitors pay and sell in New York for a fraction of a cent less. The reason for their success is apparently that the Mitsui Bussan Kaisha and other shipping companies control the Japanese firms which buy the rubber, insure and export it, and sell it in New York. Whether they show a small profit or a loss on each transaction is uncertain—and immaterial. The freight rate of $12.75 per ton controlled by the Straits-New York Conference to which the Japanese shipping companies belong assures a substantial profit on the whole. The British and American firms are not amalgamated, but are divided into separate and competing companies—rubber buyers, exporters, insurance companies, shipping companies, etc., each of which must make its percentage of profit; and in consequence they have lost ground to the large-scale Japanese amalgamations.

[6] H. North Hunt, *Report on the Working and Effects of Quotas on Cotton and Artificial Silk Piece Goods in Malaya and Sarawak During the Period 1st January to 31st December, 1936* (Singapore, 1937), p. 6.

During the past decade, Japan has secured an increasing amount of her annual imports of iron ore from the Malay states of Johore and Trengganu. Extensive deposits are controlled by Japanese companies, the ore having an average content of approximately 64 per cent metallic iron. The exports of iron ore to Japan have increased from 798,363 tons in 1929 to 1,612,309 tons in 1936—over a third of her total imports.[7]

The apprehension that Japan may have territorial ambitions in Malaya has led to the strengthening of the garrison and to hastening the completion of the naval and aëroplane base at Singapore in 1937 at a cost of approximately $100,000,000. Always assuming that conditions in Europe permitted the despatch of the British fleet, the base would protect not only British Malaya and the other British possessions to the westward, but also the adjacent islands of the Netherlands East Indies.

Despite the prevalent hostility to Japan, there is nevertheless a feeling that ultimately the most serious problem of Malaya will be the Chinese. Out of a total population of 4,385,346 in 1931, they numbered 1,709,392, or 39 per cent, of whom 31 per cent had been born in British Malaya and 69 per cent were immigrants from China.[8] They supply a large part of the labor for the mines and plantations, provide the bulk of the skilled mechanics and office staffs, and control retail trade. They also include a number of very wealthy mine and plantation owners, bankers, importers, and manufacturers. Their number and their economic power have grown rapidly; and, as in the Philippines, the Malay inhabitants of the country have shown themselves totally incapable of competing with them. The great majority have no desire to take part in the government of Malaya; they fully appreciate the economic advantages of the *pax Britannica*, although at the same time they are strong supporters of the Kuomintang government and contribute liberally to its funds. As in the Dutch colonies, the Chinese government tried to strengthen its control over them, including those who had lived in Malaya for several generations. Kuomintang and Communist agents were sent to Malaya; and during the later 'twenties there was widespread anti-British propaganda in the Chinese press and in the private Chinese schools. Chinese who were unwilling to join the Kuomintang or contribute more liberally to its funds were intimidated into doing so. At first, the Kuomintang and Communist agitators worked in alliance; but after the breach between the two sections of the party in China in 1927 their respective agents in Malaya combined attacks upon one another with their propaganda against British rule.

[7] *An Economic Survey of the Colonial Empire, 1933* (London, 1935), pp. 213, 236; A. Hartland, *Report on Economic and Commercial Conditions in Malaya to 5th March, 1937* (London, 1937), p. 48.

[8] C. A. Vlieland, *British Malaya; A Report on the 1931 Census*, pp. 38, 69.

The situation became so serious that some of the more dangerous agitators were deported to China under the Banishment Ordinance. The "growing practice of using schools as the medium for political propaganda" was curbed in 1926 by giving the director of education extensive powers of control over private schools, including the right to close them when used for unlawful purposes.[9] In 1928, the police and the courts were given increased powers to control the Chinese vernacular press, which was publishing numerous incitements to violence.[10] The governor-in-council was also empowered to impose a quota limiting the number of immigrants whenever the influx was likely to exceed the demand for labor.[11] In 1931, the Kuomintang was forbidden to organize branches in Malaya, although Chinese as individuals might belong to it and contribute to its funds.[12] The Aliens Ordinance of 1931 gave to the government power which it had hitherto lacked to prevent the entry of alien agitators and to deport those already in the country.[13] The great majority of well-to-do Chinese welcomed the suppression of intimidation and of forced levies to support the party in China. The Kuomintang's agitation practically ceased in 1931, owing partly to these ordinances and partly to the Japanese conquest of Manchuria. This convinced the Chinese government that British assistance against Japan must be secured, if possible, and that this object was not likely to be attained by teaching that Malaya was "*terra irredenta* one day to be dominated by China." Abandonment of the attempt to conciliate Great Britain would probably be followed by renewal of the agitation in British Malaya. The Communist party was unimportant from about 1931 to 1937; but the events connected with the strike of Chinese rubber estate laborers in 1937 proved to the government that it had underestimated the effectiveness of the party's organization and that more attention must be given to its activities.

In China itself, Great Britain's existing interests comprise her trade and investments and the crown colony of Hongkong. Her exports to China in 1936 were valued at $110,400,000—less than those of the United States, Japan, and Germany. British investments in China, however, were larger than those of any other foreign power. In 1931, they were estimated to amount to $1,189,200,000, or 36.7 per cent of all foreign investments in China and 5.9 per cent of the total of British investments abroad. A total of $737,400,000 was invested in business in Shanghai, $226,000,000 in the rest of China, and $225,800,000 in Chinese government bonds.

[9] *Proceedings of the Legislative Council of the Straits Settlements for the Year 1926*, pp. B45, 47, 78, 79.

[10] *Op. cit.*, 1928, p. B129; 1930, pp. B38, 39, 71, 72.

[11] *Op. cit.*, 1928, pp. B9, 36, 37; 1930, pp. B92, 93.

[12] *Op. cit.*, 1931, pp. B51, 52.

[13] *Op. cit.*, 1932, pp. B77–80, B141–154.

Altogether, 41.9 per cent of China's coastwise trade was carried in British steamers.[14]

Apart from Shanghai and the Yangtse Valley, Hongkong is the principal point of British interests. It is the trading and banking center of South China, particularly of Kwangtung province and Canton; but it also carries on a valuable trade with ports as far north as Tientsin. The causes of Hongkong's importance have been its possession of one of the few sheltered deep-water ports on the Chinese coast, its freedom from customs duties, and a security such as no port in China could assure. Merchants and bankers have had the assurance that their property would be safe from the exactions of officials and from the risk of attacks such as those which have threatened the foreign concessions in Canton and Shanghai. During the past few years, there have been indications that Hongkong would become a slowly waning asset. Chiang Kai-shek's success in unifying and controlling China, particularly Kwangtung Province, coupled with his successful introduction of a stable, managed currency in 1936, gave promise of increasing security for finance and trade in China. The mere existence of Hongkong as a British colony was naturally repugnant to the Chinese; and there were many indications that in time pressure would be exerted upon banks and commercial firms to transfer their headquarters to Canton. While Chiang Kai-shek's continued success would probably mean an increase in the total British trade with China, the share of Hongkong in that total seemed likely to decline.

Regarding the Chinese question from the viewpoint of Hongkong's interests alone, the Sino-Japanese war presents the British with two alternatives. China's success would mean a very slow decline in importance; a Japanese victory would probably ensure that result much more quickly. The Japanese are jealous of the success of Hongkong and have tried in vain to establish a rival port in Taiwan. It is most unlikely that they will overlook this objective when terms of peace are arranged. When the whole Chinese situation is envisaged, it is even clearer that British interests will suffer in the event of a Japanese victory. Japanese policy clearly aims at control of the Chinese maritime customs in the interest of Japanese imports. Control of the customs in Tientsin is reported to have been followed by reduction of the tariff on a long list of articles imported from Japan; and the Foreign Office spokesman has declined to give any assurance that the same course will not be followed at Shanghai. He also hinted that the Manchukuo precedent might be followed with regard to the foreign loans the repayment of which is secured upon the receipts from the Chinese maritime customs. The proportion of customs revenues required to cover Manchukuo's share of the Chinese debt service

[14] F. V. Field (ed.), *Economic Handbook of the Pacific Area* (New York, 1934), pp. 355–356.

has not been remitted to the foreign bondholders, but has been deposited in a Manchukuo bank until such time as that state is recognized.[15] The numerous occasions on which the Japanese have overridden the legal authority of the Municipal Council of the International Settlement at Shanghai encourages speculation as to what diminutions are intended in foreign rights there and elsewhere. For some years the Japanese have been trying to strengthen their position in Shanghai at the expense of the Western powers, both legally and in other ways.

The Far Eastern question is not a separate and isolated problem; it is merely the Far Eastern phase of the single problem of peace in Europe and Asia. The victory of Japan will not improve the chances of a reasonable and peaceful settlement of European affairs; and therefore it is not to the interest of Great Britain. For this very reason, however, it is impossible for Great Britain effectively to intervene in the Far East. Assuming that the support of the United States and of sufficient other states could be obtained to make sanctions effective, it is as certain as the unpredictable can be that Japan would retaliate either by war or by seizure of British investments in China. The latter would almost certainly lead to war. Great Britain's material interests in China are larger than those of any other Western power, and she is quite unable to protect them. Hongkong, for example, if attacked, could not hold out for more than a few weeks, and its safety would depend on the ability of the British fleet to relieve it. The China squadron is weak and would have to be reinforced by the main fleet. Naval experts estimate that, to allow for wastage, a navy about double the strength of the Japanese would be required.

The fleet, however, cannot leave the Mediterranean and the North Sea until peace in Europe is very much more assured than it is today. This cannot be accomplished for several years; and in the interim, to entangle the fleet and part of the air force in hostilities in the Far East would nullify Britain's influence as a factor for peace in Europe. In this age of revived *Realpolitik*, when words without force avail nothing, this would be to present Germany and Italy with a unique opportunity for fishing in troubled waters. The British forces are probably strong enough to ensure peace in Europe, at least in alliance with the French. They are too weak to risk dividing them, owing to the policy of partial disarmament which was followed from about 1922 to 1934. During this period, the British air force was allowed to fall to the level of that of a second-rate power and a considerable part of the fleet became obsolescent. German

[15] *London Times, Weekly Edition*, Dec. 2, 1937, p. 7. As the result of recent negotiations, a compromise has been arranged. The customs revenues collected in ports under Japanese control will be deposited in the Yokohama Specie Bank, and the quotas needed to meet the loans will be remitted to the inspector-general of Chinese customs for transmission to the bond-holders. (*Op. cit.*, May 5, 1938, p. 8).

rearmament began in 1933, but intensive British rearmament was postponed until the failure of sanctions against Italy brought home to the government and people the dangerous weakness of the British forces. To gather a fleet strong enough to overawe Italy, a second-class naval power, the home and overseas squadrons were denuded to such an extent that if war had broken out elsewhere Great Britain would have found it extremely difficult to safeguard herself. Of the fifteen battleships, for example, twelve are over twenty years old and practically obsolete; and instead of the seventy cruisers which the Admiralty has always contended was the minimum requirement for safety, there are about forty-three modern and ten obsolete. In 1914, there were 125, and this number proved inadequate.[16] British rearmament cannot be completed until 1939 or 1940. Until then, Great Britain will be compelled to concentrate her forces in Europe and to avoid a war: she cannot run the risk of a conflict with Japan. It is idle to speculate upon what effect this may have upon her Far Eastern interests; but it is pertinent to recall the old Spanish proverb: "When the house is on fire, who troubles about the barn?"

LENNOX A. MILLS.

University of Minnesota.

[16] Liddell Hart, *Europe in Arms* (London, 1937), pp. 68–79; H. C. Bywater, in *International Affairs*, Vol. 16, No. 3, pp. 361–380.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The thirty-fourth annual meeting of the American Political Science Association will be held at the Deschler-Wallick Hotel, Columbus, Ohio, on Wednesday, Thursday, and Friday, December 28–30 inclusive. Round tables will, as usual, constitute the principal feature of the program, and have been arranged with topics and leaders as follows: (1) "American Foreign Policy," Harold S. Quigley, University of Minnesota; (2) "Political Parties: Tendencies and Possibilities of Realignment," Harold F. Gosnell, University of Chicago; (3) "Contemporary Political Leaders and Leadership," John T. Salter, University of Wisconsin; (4) "Current Problems of Public Administration," Joseph P. Harris, Social Science Research Council; (5) "Comparative Government," Robert K. Gooch, University of Virginia; (6) "Current Problems of State and Local Government," Lane W. Lancaster, University of Nebraska; (7) "The International Labor Organization," Francis G. Wilson, University of Washington; (8) "Public Opinion," Harwood L. Childs, Princeton University; (9) "Training for Public Service," Donald Stone, Public Administration Service. Round tables may be arranged on other topics, definite announcement to be made later. There will also be several general sessions, three luncheon sessions, and some special breakfast and dinner conferences. The presidential address will be given on Wednesday evening. The Program Committee consists of Clarence A. Berdahl, University of Illinois, chairman; F. W. Coker, Yale University; Herbert W. Briggs, Cornell University; D. F. Fleming, Vanderbilt University; and Leonard D. White, University of Chicago. Harvey Walker, Ohio State University, is chairman of the Committee on Local Arrangements.

Professor S. H. Bailey, of the London School of Economics and Political Science, will be visiting lecturer in international relations in the department of government at Yale University during the first semester of 1938–39 in place of Professor N. J. Spykman, who will be on leave.

Professor Phillips Bradley, of Amherst College, has accepted a professorship at Queen's College in New York City.

Dr. William P. Maddox, of Princeton University, has accepted an associate professorship of international relations at the University of Pennsylvania.

Professor James K. Pollock, of the University of Michigan, is teaching at Stanford University during the current summer quarter.

Professor Francis W. Coker, of Yale University, was on leave during the second semester of 1937–38 and spent part of the time traveling in Europe with his family.

Mr. A. Whitney Griswold has been appointed assistant professor of government and international relations at Yale University, and Messrs. Donald N. Wheeler and George L. Millikan have been appointed instructors in government.

Professor Charles C. Rohlfing, of the University of Pennsylvania, has been designated by Governor George H. Earle to serve on a committee to investigate the alleged disfranchisement of voters under the recently enacted permanent registration law for Philadelphia.

Professor Denna F. Fleming, of Vanderbilt University, has been awarded a Penfield traveling fellowship for research in Washington and London during 1938–39. He has also been advanced to a full professorship at Vanderbilt. During the coming year, his classes will be in charge of Mr. Roland K. Beyer, of the Fletcher School of Law and Diplomacy.

At George Washington University, Dean William C. Johnstone has been advanced to a full professorship. He will be on leave during the second semester of the coming academic year and will visit the Near East, India, and the Far East.

While on leave from the University of Wisconsin during the second semester of the coming academic year, Professor Grayson L. Kirk will teach at Columbia University.

Dr. Charles G. Maphis, founder and director of the Institute of Public Affairs at the University of Virginia, died in May, and has been succeeded by Professor Robert K. Gooch, professor of political science, as acting director.

At the University of Chicago, the status of Dr. Walter H. C. Laves has been changed from that of lecturer to that of associate professor. Dr. Laves has now resigned his position with the League of Nations Association.

At the University of Missouri, the research council has made a grant to Professor J. G. Heinberg for a continuation of his study of the personnel of French cabinets under the Third Republic, and another to Professor W. L. Bradshaw for a study of state fiscal control over local government in Virginia and North Carolina.

Miss Dorothy Schaffter will be on leave from Vassar College in 1938–39, and, under a grant from the Carnegie Corporation, will carry on a

field study of housing boards in the sixteen states now having such agencies. Miss Schaffter has been made a member of the committee on education and research of the National Association of Housing Officials.

Professor R. D. McIntyre, who has been on leave from the University of Kentucky, will resume his duties in September, and Professor Rodman Sullivan will go on leave for a year of research.

In connection with the commencement exercises of last June at Indiana University, a room in the university library was dedicated as a memorial to Professor Amos S. Hershey, who taught political science at Indiana from 1895 until shortly before his death in 1933.

Dr. S. Shepard Jones, formerly a Rhodes scholar at Oxford and an instructor in government at Harvard, has been appointed director of the World Peace Foundation.

Professor Graham H. Stuart, of Stanford University, gave courses on American diplomacy in the summer session of Western Reserve University. After a year's leave of absence on account of impaired health, Professor Earl L. Shoup will resume his work at Western Reserve this fall.

Dr. Milton E. Loomis, who resigned as dean of Washington Square College, New York University, last October, will return to the University this autumn as professor of municipal government.

At the Citadel (the Military College of South Carolina), Dr. James K. Coleman has been promoted to a professorship of political science.

Dr. Vernon O. Key, Jr., for some time associated with the Committee on Public Administration, Social Science Research Council, will teach during the coming year at the Johns Hopkins University.

Professor Richard C. Spencer, of Western Reserve University, has been granted leave of absence for next year and will spend a portion of the period abroad.

While on leave from the College of the City of New York during the academic year 1937–38, Dr. John D. Larkin served as associate professor of political science at the Armour Institute of Technology, Chicago; and he has now accepted a permanent post at the latter institution.

Professor William O. Farber has resigned his position at the North Dakota State College to accept a full professorship and the headship of the department at the University of South Dakota, where he formerly taught.

While continuing at his present post in the department of public law and government at Columbia University, Dr. Robert H. Connery will lecture on American government and public administration at the Catholic University of America, Washington, D. C., during the academic year 1938–39.

Dr. Herman H. Trachsel, of the University of South Dakota, has been appointed to an associate professorship at the University of Iowa.

At the University of Oklahoma, Professor Royden J. Dangerfield has been appointed to the newly established position of assistant dean of the graduate school.

At the University of Kansas, Mr. Rowland W. Maddox has been advanced to an assistant professorship and Mr. Hilden Gibson, of Stanford University, has been appointed to an instructorship.

Dr. John Brown Mason, recently of Santa Ana Junior College, Santa Ana, California, has accepted an assistant professorship of social science at the Fresno State College.

At the University of Akron, Professor Roy Sherman has been promoted to the headship of the department of political science, and Dr. Paul M. Zeis, of the University of Nebraska during the past two years, has been appointed to a junior position.

Professor Chesney Hill, of the University of Missouri, is spending the summer in Geneva, Switzerland, as a member of the American Committee of the Institute of International Studies.

Dr. Stephen B. Sweeney has been appointed director of the Institute of Local and State Government at the University of Pennsylvania.

Dr. Bradford W. West, assistant professor of comparative government at the University of Pennsylvania, studied in Germany during the summer on a grant from the Penfield Fellowship.

Dr. John H. Marion, of Yale University, has accepted a position in the department of history and political science at Rutgers University.

Dr. J. F. Isakoff has resigned his instructorship at the University of Illinois to accept a position on the research staff of the Illinois Legislative Council. His successor at Illinois is Dr. Mulford Q. Sibley, who recently completed his graduate work at the University of Minnesota.

Mr. Paul C. Bartholomew, who was awarded a doctor's degree at the University of Kentucky in June, has been advanced to an associate professorship of politics at the University of Notre Dame.

During the past academic year, the bureau of business research of the University of Kentucky has collaborated with the research staffs of the state department of revenue, the state unemployment compensation commission, and the Kentucky legislative council in the study of several problems, among them property assessments, property tax collection, county finance, and unemployment compensation legislation and administration.

Dr. Lent D. Upson, director of the Detroit Bureau of Governmental Research and of the School of Public Affairs and Social Work of Wayne University, has recently been appointed chairman and director of survey for the Michigan Tax Study Commission. Dr. Upson will be assisted by Professor S. A. Larsen, of the department of business administration, and Mr. Laurence Michelmore and Dr. Egbert S. Wengert, of the department of government. Mr. L. D. Woodworth, recently of the senate committee on relief and unemployment, is acting as chief of staff and Dr. Laszlo Ecker-R, of the research division of the U. S. Treasury, as consultant.

The National Institute of Public Affairs, Washington, D. C., announces that during the past academic year thirty-five internes were placed in more than thirty different federal agencies in Washington for a nine-month period of service. Eight of the number have now received fellowships for further graduate study and more than thirty took and passed the junior social science analyst examinations with a high average. It is expected that the majority of the group will find positions with and remain in the federal service.

The Institute of Local and State Government at the University of Pennsylvania has prepared a program of public service education in Pennsylvania for the state department of public instruction. The plan has been approved by the federal authority in accordance with the George Deen Act, and Messrs. Rollin B. Posey and George Townsend, technical associates of the Institute, have been appointed principal and assistant principal for the supervision of this public service vocational education.

The Philadelphia Advisory Finance Commission has issued its final report, *Financial Analysis of the City of Philadelphia.* President Thomas S. Gates, of the University of Pennsylvania, was chairman of the commission, and the project was assisted by a number of faculty members of the University, chiefly Dr. Stephen B. Sweeney, Dr. Edward B. Logan, Mr. Bernard F. Cataldo, Dr. W. M. Hench, Dr. John P. Horlacher, Dr. William M. Loucks, Dr. J. C. Phillips, Dr. W. C. Plummer, and Dr. Karl Scholz. Others who assisted in the study were Professor W. Brooke

Graves, of Temple University, and Mr. Edward B. Shils, a graduate student at the University of Pennsylvania.

Training for a new profession—that of appraiser of the efficiency of city and county governments—will be instituted in September at the University of Denver under a grant for the first year of $29,000 from the Albert P. Sloan Foundation of New York. The course will be of eighteen months' duration, and graduates (with the degree of master of science in government management) are expected to qualify as research assistants to citizen groups interested in checking waste in local government and improving public welfare services. A large part of the students' work will be in city and county offices in Colorado and adjoining states. Ten fellowships, ranging in value from nine to eighteen hundred dollars, have been provided.

Fifteen men, ten of them in the federal service, have been selected from two hundred applicants to receive Lucius N. Littauer fellowships for study at Harvard's new graduate school of public administration during the school's first regular session, beginning in September. The appointees will devote their time to the research seminars of the school and to collateral courses in other graduate schools of the University. Enrollment during the coming year will be restricted to the holders of fellowships and a few others with similar qualifications. Under a plan financed by the Rockefeller Foundation, the practice will be continued of associating with the school both resident and non-resident consultants drawn from the public service. The corner-stone of the four-story building to be used later by the school was laid on May 6.

The American Council of Learned Societies expects to continue in 1938–39 assistance to the publication of a limited number of meritorious works in the field of the humanities written by American scholars. It invites its constituent societies to propose books that they deem suitable for assistance, but reserves the right to consider works submitted by others. Works proposed for publication should ordinarily be complete in themselves, preferably the results of constructive research presented in the form of volumes of conventional size. Important books of reference and critical editions of valuable texts may also be submitted. Applications for aid in the publication of doctoral dissertations will not be considered save in exceptional cases. Applications for the next awards of grants in aid of publication, on forms provided for the purpose, must be received in the executive offices of the Council, 907 Fifteenth Street, N W., Washington, D. C., on or before November 1, 1938. They must include descriptions and critical appraisals of the works proposed, together with full manufacturing specifications and estimates of cost. No work can be

considered of which the manuscript is not available for examination in completed form.

On May 7 and 8, the Committee on Public Administration of the Social Science Research Council sponsored a meeting at Philadelphia to discuss research in the problems of the public corporation. Mr. Herbert Emmerich, associate director of the Public Administration Clearing House, Chicago, acted as chairman. The other participants were: Professor Marshall E. Dimock, University of Chicago; Professor Rowland Egger, University of Virginia; Hon. Peyton R. Evans, general counsel, Farm Credit Administration; Dr. Herman Finer, London School of Economics and Political Science; Dr. Patterson French, Yale University; Professor Alexander H. Frey, University of Pennsylvania Law School; Philip Glick, U. S. Department of Agriculture; Dr. Lincoln Gordon, Harvard University; Herbert Marks, Tennessee Valley Authority; Professor John A. McIntire, George Washington University Law School; Professor Arthur W. Macmahon, Columbia University; Dr. Harvey Pinney, New York University; Dr. C. Herman Pritchett, Social Science Research Council; Mr. Joseph Swidler, Tennessee Valley Authority; and Dr. John Thurston, Northwestern University.

At a luncheon held at Philadelphia at the time of the American Political Science Association's meeting in December, a group of about twenty-five university men and public officials agreed that the study of public administration would be greatly facilitated if there could be made available, as material for research, case studies illustrating the administrative process in action, and the bases and modes of the exercise of administrative discretion. At the suggestion of the participants, the Committee on Public Administration of the Social Science Research Council has appointed a subcommittee, under the chairmanship of Professor George C. S. Benson, of the University of Michigan, to explore the possibilities of developing such material, to suggest methods, and to enlist the interest of administrators and scholars in undertaking such projects. Those who have accepted invitations to membership on the subcommittee are: Dr. John J. Corson, Jr., Social Security Board, Washington; Professor George A. Graham, Princeton University; Dr. Luther H. Gulick, Institute of Public Administration; Hon. W. A. Jump, U. S. Department of Agriculture; Professor Morris B. Lambie, Harvard University; Dean William E. Mosher, Syracuse University; Dean Emery E. Olson, University of Southern California; Dr. Henry Reining, Jr., National Institute of Public Affairs; Dr. Clarence E. Ridley, International City Managers' Association; Mr. Donald C. Stone, Public Administration Service; Professor Arthur Fleming, American University, and Professor Leonard D. White,

University of Chicago. A first meeting of the committee was held in New York on May 21 and 22.

From the Council of the Society for the Psychological Study of Social Issues (Professor Gardner Murphy, of Columbia University, chairman) comes the following appeal: "A vigorous effort has been made for two years to integrate research work in social psychology and several other social sciences, with a view to achieving true scientific status for the study of the psychological problems most vitally related to modern social, economic, and political policies. There is, of course, a long way to go, but to nearly four hundred members and associates of the American Psychological Association who have already joined the Society for the Psychological Study of Social Issues, immediate steps towards group planning, coöperation in research, and a method of guaranteeing the execution and publication of work of wide social importance have appeared to be worth while. The SPSSI has indeed other interests than those just mentioned; notably the educational task of combating misleading propaganda which is uttered in the name of scientific psychology, and helping the public to understand and to use in the formation of social policies contributions from the scientific investigation of human behavior. In the long run, however, the main purpose of the SPSSI is *research investigation* of psychological problems which are of social importance. The chief business carried forward by the Society up to the present time is the preparation of yearbooks. Two yearbook committees (under the editorial supervision of Goodwin Watson of Columbia University, G. W. Hartmann of Columbia University, and Ross Stagner of Akron University) were set up last summer, one to deal with the psychology of industrial conflict and the other with the psychology of war and peace. Both yearbook committees have been hard at work and have obtained effective collaboration from a large number of psychologists and other social scientists. These volumes, in the form of symposia of research materials and interpretations by experts, will be available early in 1939. Two other yearbooks (for 1940 and 1941) are now being planned. The intention is to issue a yearbook each spring. To help in fulfilling its function as a research organization, the Society publishes a *Bulletin* which carries abstracts of current research work and aims to become in time a genuine central clearing house for research information in social psychology. *Almost every phase of our work calls for collaboration with social scientists who share our interests.* Thus the yearbook committees have obtained fine coöperation from historians, economists, political scientists, sociologists, and anthropologists in preparing material, writing interpretations, and giving expert advice regarding many phases of the yearbook undertaking. While the purpose of the yearbooks is not to preëmpt for

psychology a task which is truly inter-disciplinary, the psychologist regards his work of analysis as effective only when the most competent historical, economic, and sociological work has been carried through. Every phase of social psychology, and in particular those reported by the yearbooks, requires mutual understanding between those who approach the problem from different angles and demands that the psychologist pay close attention to the research techniques and the systematic interpretations which arise in related fields. This will make plain why we urgently invite members of related learned societies to join us by becoming members of our society or by offering their services to the yearbook committees. If you are interested in these objectives and willing to coöperate with us in the execution of the tasks for which we exist, we earnestly invite you to send your name to the secretary of the Society, Dr. I. Krechevsky, Swarthmore College. The annual dues of the Society are $2.00, which includes a subscription to the Society *Bulletin*."

The Folklore of Capitalism. By THURMAN W. ARNOLD. (New Haven: Yale University Press. 1937. Pp. xiv, 400. $3.00.)

Professor Arnold's latest study of the curious mythologies and social practices of the American Tribe seems to have "got some people's goat, but to have aroused an equivalent enthusiasm in other quarters. One reviewer accuses Mr. Arnold of "kidding"—"kidding the pants off you" is the expression—while another compares the volume with *The Origin of Species.* Without being either a specialist in kidding or an authority on evolution, the reviewer found *The Folklore of Capitalism* both highly diverting reading and at the same time stimulative of serious thought.

Mr. Arnold unquestionably possesses a very pretty talent for spoofing. No one will doubt that after reading his delicious account (pp. 48–51) of a discussion between some bankers, business men, and lawyers of an order by the I. C. C. early in 1936 cutting the passenger rates of the chronically mismanaged and bankrupt New York, New Haven, and Hartford Railroad. "Every man there would directly benefit from the lower rate. None were stockholders." Their "sincere indignation had its roots not in selfishness nor the pursuit of the profit of the moment, but in pure idealism." They could not bear to see the great principle violated "that government should not interfere with business." Delightful, too, is the comparison (Chaps. 11–12) of the eagerness of the American public to be taxed by business for the promotion of public works in Cuba and Peru and its resentment at being taxed by government for similar works at home.

The wealth of entertaining detail in the volume is enormous, and this naturally obscures its central thesis, which I take to be simply an endorsement of Plato's assertion that every polity must have its "first lie." Only Mr. Arnold would have this lie kept up to date; and the fact that it has not been kept up to date among the Americans, is, in his opinion, the most important cause of their current pessimism. The crash of 1929 discredited in the minds of many, at least, the American Way, which put Business on top and relegated Government largely to a hortatory rôle; and for the emerging situation the proper vocabulary has not yet been found. "Men believe," as he puts it, "that a society is disintegrating when it can no longer be pictured in familiar terms. Unhappy is the people that has run out of words to describe what is going on" (p. 121).

Furthermore, this discrepancy between fact and vocabulary is a serious hamperment to needed social reforms, for "a social need which runs counter to an abstract ideal will always be incompetently met until it gets a philosophy of its own. The process of building up new abstractions to justify filling new needs is always troublesome in any society, and may be violent" (p. 378). And, pursuing this same thought, Professor Arnold

enjoins "the rulers of society" to produce an ideology capable of maintaining "social morale" without resort to violence.

Two questions, at least, arise: The first is: Where is the precise line to be drawn between maintenance of "social morale" and maintenance of "the rulers of society" in power? The second is: What assurance do current events afford us that ideologies offer an escape from violence, rather than a plunge into it? Personally, I prefer the outlook disclosed in Professor Arnold's casual remark at another point: "Today we are without moral preconceptions when we control physical epidemics; but we are still fettered with them when we consider social problems" (p. 86).

Let us get rid of our old fetters, by all means; but why exchange them for new ones? At least, I should like to have a glimpse of the new fetters before extending my wrists. Will Professor Arnold write another book to answer that demand?

EDWARD S. CORWIN.

Princeton University.

American Socialism; Its Aims and Practical Program. By HARRY W. LAIDLER. (New York: Harper and Brothers. 1937. Pp. xv, 330. $2.50.)

The People's Front. By EARL BROWDER. (New York: International Publishers. 1938. Pp. 354. $2.75.)

Mr. Laidler's book first appeared in 1935 under the title *Socializing Our Democracy*. It is a scholarly presentation of the case for a socialized order. This case is made all the more convincing by the restraint, the respect for fact, and the caution in generalizing that characterize *American Socialism*. What is outstanding about this book is the wealth of material brought in support of the author's argument.

Mr. Laidler contends that under capitalist property arrangements we cannot make the most of our productive machine; that public ownership of banking, monopolistic industry, and natural resources is necessary in order to achieve the production of which modern technology is capable; and that from the angle both of institutions (structure) and incentives a socialized economy is certainly possible.

Although Mr. Laidler meets the usual objections to socialism most successfully, there is one which is raised by orthodox economists—von Mises, Robbins, and Hayek—that he does not consider. These economists insist that a rational allocation of resources is impossible in a socialized economy, and that this is the chief economic objection to its realization. This contention, however, has been disposed of in two brilliant papers: "The Guidance of Production in a Socialist State," by the late Fred M. Taylor, and "On the Economic Theory of Socialism," by Oskar Lange.

Mr. Laidler assumes, as do socialist and communist writers almost

without exception, that a socialist government can socialize a capitalist economy slowly—one industry at a time—and still remain a socialist government. Lange, it would appear, has broken new ground in showing in the above paper that this is impossible.

Mr. Browder's *The People's Front* is a significant volume in American socialist literature. In a series of reports, speeches, and articles, Mr. Browder expounds the new line of the Communist party, adopted in the summer of 1935. The new line reverses the old policy of attacking democracy and bitterly opposing liberals and socialists. The new line vigorously supports democracy and calls upon all progressive-minded people to join with the communists for the single purpose of defending the democratic order against fascism and reaction. The people's front does not aim at socialism but simply at the maintenance and reform of capitalist democracy. Not only, according to Mr. Browder, are the American people not ready for socialism, even though economic and technological conditions are ripe for it, but fascism is the mortal enemy of modern civilization.

This change in policy represents a growth in political understanding, for it means that communists recognize that democracy and capitalism are not identical, that the middle class not only exists but wields great power, and that the attainment of socialism is unlikely without the support of a large part of this class. Although this change in policy will make communism more popular, two things will most likely prevent it from being widely accepted in the near future. First, the insistence, such as Mr. Browder's, that Soviet Russia is a genuine democracy in face of the fact that political disagreement is settled by the firing squad. Second, the communist belief, whose statement Mr. Browder cleverly evades rather than retracts, that revolution by force is unavoidable in the attainment of socialism. This is still an unattractive thought to middle-class America.

Under the inspiration of the people's front, Mr. Browder finds that Washington, Jefferson, Jackson, and Lincoln are heroes who must be ranked side by side with Marx, Engels, Lenin, and Stalin in the communist hall of honor. Mr. Browder establishes his new inheritance with the slogan that "Communism is Twentieth-Century Americanism."

The People's Front shows a considerable grasp of American history and political institutions despite Mr. Browder's Marxian imagination. Though the book is quite free from catch phrases, it may be suggested to Mr. Browder that neither history nor socialism is scientific in the strict sense of physical science. If Mr. Browder thinks otherwise, he has yet to learn the lessons of Morris R. Cohen's *Reason and Nature*.

The People's Front is never dull reading; it is written in a straightforward, and often crisp, style. It possesses the dramatic power of a protagonist who feels sure of his ground, but who does not underestimate the

strength of his enemies. Anyone who would understand the new communist mentality and assess the record of the party in recent years, which is truly astonishing in the light of its small numbers, cannot afford to miss this volume.

BENJAMIN E. LIPPINCOTT.

University of Minnesota.

State and Federal Grants-in-Aid. By HENRY J. BITTERMANN. (New York: Mentzer, Bush, and Company. 1938. Pp. x, 550.)

This volume, by an assistant professor of economics at the Ohio State University, is the product of a somewhat awe-inspiring effort to bring within two covers an analysis of state grants to local subdivisions and federal grants to states, approached from the standpoints both of finance and of administration. To judge from internal evidence, labor on the manuscript (which, in an earlier draft, was submitted as a doctoral dissertation at the University of Chicago in 1932) was spread over a period of at least twelve years. The study is based largely on a thorough and painstaking search of the printed materials, and, the author modestly states, "must be considered as prolegomena subject to such modifications as more intensive studies might indicate."

The first part of the volume is concerned with the grant-in-aid as a financial device, i.e., a method for adjusting a system of centralized tax collection to local administration of spending functions. A chapter each is devoted to state highway and school subventions, since they are the most important of state grants to localities. In each instance, the development of the grant-in-aid is related to the general tax and administrative structure of the states; in this way the grant is placed in the general governmental setting and the reasons for the choice of the grant rather than other methods of financial adjustment are made lucid. Considerable weight is attached to the finding that both state and federal grants generally have been inaugurated at times of treasury surpluses. Whether this novel proposition has any significance may be determined only after ascertaining whether functions directly administered by grant-making governments tend to be initiated under similar circumstances.

The treatment of the grant as an administrative device, i.e., as a means of directing the policies of subordinate governmental units, occupies almost half the volume. Again the state school and highway grants are analyzed. In neither case is it found that the grant is an important device for directing local administration. The approach to the federal grant as an administrative device is through a description of each federal aid program: highways, unemployment relief, social security, agricultural extension, etc. In each instance, the objectives of the aided program and the principal administrative controls are described.

The third part of the volume treats of the apportionment of grants by the federal government among the states and by the states among local subdivisions.

The chief contribution of the volume seems to lie in the analysis of the grant-in-aid as a financial device, although this reviewer can claim no particular competence as a judge of matters fiscal. The portion dealing with the grant-in-aid as an administrative device consists of workmanlike descriptions of aided activities, extremely useful for student reading and as points of departure for further research, but lacking in any significant contribution to administrative theory or to the understanding of the general nature of administrative processes.

V. O. KEY, JR.

Washington, D. C.

Tax Relations Among Governmental Units. BY ROY BLOUGH AND OTHERS. (New York: Tax Policy League, Inc., 1938. Pp. vi, 226. $2.75.)

Students of government and taxation desirous of keeping abreast of the best current thought concerning the allied problems of conflicting taxation and the distribution of governmental functions will find this collection of addresses by some of the nation's leading tax authorities exceedingly helpful.

As Seabury C. Mastick points out in his foreword, the most pressing tax problems of today arise out of the complexity and confusion of intergovernmental tax relationships. The old notion that each unit of government should raise the revenues necessary for the maintenance of the functions which it administers is naïve and outmoded, inasmuch as it clashes with the more modern concept that governmental functions should be assigned to those units which can most effectively perform them, and that taxes should be levied by governmental units capable of assessing and collecting them effectively. Failure to apply the modern principle necessitates the granting of financial aid on the part of larger units to subordinate ones. The problem is aggravated by the extravagant number of small governmental units, which can be justified by nothing more plausible than tradition and local vested interests.

In respect to federal-state conflicts, Franklin Edmonds calls attention to the way in which federal and state taxes have been synchronized in Australia and Argentina with a great reduction in collection costs as well as increased convenience to the taxpayers. He recommends that the same thing be done in the United States in respect to income and excise taxes. Carl Shoup develops the reasons why the federal government should take the lead in effecting coördination to safeguard its own fiscal program. The

theme is further developed by James W. Martin and Robert E. Hatton, the former emphasizing improvements in administration and the latter discussing the evils of reciprocal immunity.

The second series of papers deals with interstate coöperation. Specific types of coöperation include reciprocal tax laws, reciprocal agreements between tax officials for inspection of income tax returns, uniform administrative procedures, and interstate compacts.

The next three papers deal with federal and state aid. Roy Blough concludes that in most instances the subvention is preferable to state-administered, locally-shared taxes. The undesirability of shared taxes grows progressively with the proportion of local revenue derived from them. W. H. Stauffer believes that the state must assume greater control of basic governmental functions. He says that the price of local self-government may be greater than the benefits which it confers.

There is a final series of six papers on state control of local finance. Wylie Kilpatrick points out the superiority of state administrative review of local budgeting and borrowing over rigid tax and debt limitations. Howard P. Jones states that it is the conclusion of the New York Commission on Revision of the Tax Laws that control of debt is the first fundamental in any comprehensive expenditure control program. Alfred Willoughby reminds us that reorganization of local government is taking place out of necessity and raises the question whether the reorganization effected piecemeal through the pressure of economic necessity will be the kind we want. The final chapter is a paper by Philip H. Cormick, who points out that most of the fiscal problems of local government have grown out of the wastage and unrestricted use of land resources.

Here, compressed into one small volume, are the essential facts, together with the seasoned judgment of sixteen eminent tax authorities about a situation which cries for correction. The papers were written to be understood by a lay audience and are very readable. This enhances the value of the book.

PAUL W. WAGER.

University of North Carolina.

Horatio Seymour of New York. By STEWART MITCHELL. (Cambridge, Mass.: Harvard University Press. 1938. Pp. xx, 623. $5.00.)

The worst his Republican opponents could say of Horatio Seymour in the course of the presidential campaign of 1868 was that he was "a Democrat disguised as a gentleman." Stewart Mitchell's admirable full-length portrait of the New York statesman makes it clear that the word "disguised" as used in that taunt was wholly unwarranted. Unfortunately, at least in a political way, for Seymour, he *was* a gentleman, too urbane, tolerant, and cultivated to gain a victory over Grant in the rough and

tumble struggle for the presidency. Nevertheless, in addition to various minor posts, the New Yorker won the governorship of the Empire State twice, occupying that office in 1853 and 1854, and again during the crucial Civil War years 1863 and 1864. Born in 1810, he was associated actively with all the more important affairs of his state from 1833 on. From 1852 to the date of his death (1886), he was nationally known, an admired and towering figure in the councils of the Democratic party.

Horatio Seymour was not only a gentleman; there was in him also something of the seer and philosopher. Perhaps he lived before his time, although it may be questioned whether, after all, the present is preferable to Reconstruction days. However that may be, one reads with a feeling akin to amazement the views expressed several decades ago by the Utica statesman on such subjects as war, immigration, prison reform, transportation, finance and taxation, political machines and bosses, even on communism. They would be regarded as progressive in the most advanced contemporary circles.

To political scientists, Mr. Mitchell's study will be of great value. He makes clear and luminous the interminable partisan feuds carried on in New York State by Anti-Renters, "Hunkers" and "Barnburners," "Hard Shells" and "Soft Shells," "Drys" and "Wets," "Wooly Heads" or "Conscience" Whigs, "Silver Grays" or "Cotton" Whigs, Native Americans or Know-Nothings. Seven maps show the results by counties of each election in which Seymour was a candidate. The brief account given of the voting by soldiers in the field during the Civil War will interest students of our present absent voting laws. Early experience with the two-thirds and unit rules in Democratic national conventions, and the results of the popular and electoral vote in 1860—both matters of special importance to political scientists—are also discussed adequately. Two excellent detailed chapters deal with the Democratic national convention of 1868 and the ensuing campaign. The fight made by Tilden, with the vigorous assistance of Seymour, which resulted in the overthrow of Boss Tweed is described admirably. A chapter that will appeal to historians and lay readers alike deals critically with the "Great Draft Riots" of 1863 which are shown to have been grossly exaggerated by an "orgy of journalism," Horace Greeley being the chief offender. Comparison between the Draft Act of the Civil War and the Selective Service Act of 1917 might, however, have been carried somewhat farther.

Mr. Mitchell's work exhibits industry, penetration, and balance throughout. It is beautifully written, touched at times with humor, full of incisive characterizations of men and events. There are innumerable quotable comments on public figures from William L. Marcy to Grover Cleveland; it grieves the reviewer to be compelled to delete them because of limitations of space. Mr. Mitchell is a frank admirer of Seymour, but

he never allows his sympathy with the New York leader to blind him to the latter's occasional errors, nor even to those instances in which he "did the right thing in the wrong way."

ROBERT C. BROOKS.

Swarthmore College.

America's Stake in International Investments. By CLEONA LEWIS. (Washington, D. C.: The Brookings Institution. 1938. Pp. xvi, 710. $4.00.)

The boundary line between economics and political science, never very sharp, frequently fades out altogether in this excellent analytical history of the migration of capital into and out of the United States. In Part I, the author surveys "a century and a half of 'borrowing'," which expanded foreign investments in this country from a trifling $9,200,000 in 1783 to a peak of $7,200,000,000 in 1914. This inflow, "adjusted to the needs of the country's . . . developing economic system," went into canals, highways, land speculations, railroads, cattle ranches, mines, and other rising industries. But the total was never more than three to five per cent of the whole national wealth. War-time liquidation (1914–19), in large part to finance belligerent purchases in America, reduced foreign holdings to about $4,000,000,000, an important factor in the phenomenal transformation of the United States from a debtor to a creditor position.

Part II deals with the growth of American investments abroad. As late as 1897, the total direct and portfolio investment abroad was less than $1,000,000,000, but by 1914 it was approaching $4,000,000,000. The geographical distribution and types of foreign enterprises involved are reviewed in detail. The author also treats in detail the politically, as well as economically, important war and reconstruction loans of 1915–24, and the period of over-lending which followed. The "defaults of the 1930's" appear as "the painful aftermath of the excessive and ill-advised [foreign] borrowing of the 1920's."

In Part III, the author reviews "America's creditor-debtor experience," in comparison with that of "other creditor countries," and concludes with a discussion of "issues for the future." The outlook for "existing [American] investments" abroad embraces inclination as well as capacity to pay. In both respects, conditions differ widely from country to country. The author sees "no assurance that international trade and service transactions and gold movements" will permit even the "present scale of payments to continue," to say nothing of obligations now in default. Much will depend upon the course of economic development in the United States and elsewhere, and upon the "future of international commercial policies." And these, as the author might, but does not, add, will depend less upon sound economic considerations than upon pressure politics and

the frenzied quest for autarchical military security. In the light of current politico-economic trends in Europe, the Far East, and even Latin America, the outlook for existing foreign investments, as well as for "future investment opportunities," would seem even less favorable than the author's generally pessimistic view.

No student of American foreign relations and policies can afford to ignore this book. Its well organized and clearly written text, numerous graphs and tables, and copious statistical appendices provide details hitherto lacking for a fuller understanding of the development of our economic foreign policies, and for a clearer perception of the triumph of politics and militarism over economics in the chaos of international relations today.

HAROLD H. SPROUT.

Princeton University.

Public Service in Great Britain. By HIRAM M. STOUT. (Chapel Hill: University of North Carolina Press. 1938. Pp. xx, 189. $2.50.)

In this compact and well-written volume, Dr. Stout places the English civil service in its larger framework, the public service. The clue to the excellence of the former is found in substantial measure in its relation to the latter, and to the sense of *res publica* which impels the leading figures in Great Britain to choose some form of public life as a career. The same thesis which is so ably set forth here runs through Miss Holtby's fine novel of English county government, *South Riding.*

Much of the ground covered by Dr. Stout has been traversed in other works, notably the recent second edition of Herman Finer's *The British Civil Service.* The underlying community of attitude which until 1914, and to a considerable degree even to the present day, has existed between "the honorable member" and the "permanent brain trust," as the author designates two of his chapters, has, however, seldom been treated so effectively. The part of the public school in this relationship is well emphasized.

The author writes well, and it is a safe prediction that this book will be widely and profitably read not only by university students but by that growing body of American personnel experts who are eager to look beyond their immediate horizons.

An important task still remains for some future student of the British public service. No one has yet examined the rise, present extent, powers, responsibility, and relationships of the professional and scientific classes in the ministries. Probably in no respect does the civil service of today differ more profoundly from the service of 1870 than in the extent to which the respective professions and scientific specialities contribute to

administrative and political decisions. Important problems of status and authority which are almost universal in application, and which have been considered thoughtfully across the sea, are involved in this major evolution.

LEONARD D. WHITE.

University of Chicago.

International Law, Volume I: Peace. BY L. OPPENHEIM. (New York: Longmans, Green and Company. Fifth edition. Edited by H. Lauterpacht. 1937. Pp. lvi, 819. $16.00.)

This, the fifth edition in less than thirty-five years of Oppenheim's widely known and authoritative treatise, is evidence alike of the acknowledged excellence of the original and of the scholarship and influence of the editor. Just appointed to the Whewell chair at Cambridge, held by Oppenheim soon after he wrote the original volumes, Professor Lauterpacht here completes a major contribution in its own right begun by his fifth edition, last year, of the volume on *War*.

This is more than a new edition bringing down to date the references, citations, and materials since the fourth edition, now nearly a decade old. For Professor Lauterpacht has added fifty sections of entirely new matter. These cover not only doctrinal discussions made essential by the emergence of new issues, as well as by important developments in international law and relations, but considerable fresh appraisal and analysis of problems only briefly (or not at all) considered in early editions. Of the former, such questions as Universal and Regional International Law, International Legislation and the Revision of International Law, and the Legal Nature of the Recognition of Governments are examples. Of the latter, Preparatory Work in the Interpretation of Treaties, and discussions of various technical problems in the field of codification and of new international organizations, suggest the wide range of the editor's own contributions.

The philosophical position of author and editor are too well known to require comment. Professor Lauterpacht's writings mark an important development in the reassertion of the place of custom and morality in the growth and application of law. Without obtruding his own ideas—indeed there is a happy unity in structure and style between his own point of view and writing and that of Oppenheim—he brings out and reinforces the author's major contribution to Anglo-American thought. Here "the rule of law" finds fresh and impressive theoretical and pragmatic support.

This volume, like its companion, is a model of organization and format. An index of twenty-five pages, a careful analytical table of contents and other reference tables, and thorough documentation on the bibliographical

side, attest the editor's scholarship. The typography is excellent, and the proof-reading—of a most difficult sort—letter-perfect.

PHILLIPS BRADLEY.

Amherst College.

The Lives of Talleyrand. By CRANE BRINTON. (New York: W. W. Norton and Company, Inc. 1936. Pp. 315.)

Talleyrand. By COMTE DE SAINT-AULAIRE. Translated from the French by George Frederic Lees and Frederick J. Stephens. (New York: The Macmillan Company. 1937. Pp. 371.)

The Lives of Talleyrand is a book that must not be overlooked by the political scientist simply because its form is biographical and its hero of doubtful repute. Professor Brinton offers a reappraisal of Talleyrand. This he accomplishes in an extraordinarily interesting and persuasive fashion. The book, however, is much more than a biography.

The career of Talleyrand is used as a dramatic framework wherein the author shows that human happiness and social welfare may be promoted even by statesmen who have little reverence for abstract principles. Talleyrand treated principles as means for persuading men to accept his leadership. His career, Professor Brinton judges, not by canons of consistency or by loyalty to ideals, but rather by the effectiveness of his methods in promoting his own career and the good of Europe. Talleyrand's success depended upon his skill in grasping all aspects of a political situation. Whether the highest statesmanship can be judged simply by pragmatic standards or can be based upon an enlightened opportunism is a question susceptible of long debate among persons of varying ethical standards.

Talleyrand had his own set of values, which he tried to realize. His thinking did not conform to either the radical's distrust of the past or the conservative's fear of change. *Plus ca change plus c'est la même chose* is his best known epigram. "He could study his fellows without confusing his conclusions with his desires, which, contrary to the legend, were the desires of a kindly, civilized, moral person" (p. 261).

"In fact," says Professor Brinton, "he managed to think about men in society very much as the scientist thinks about his subject. Misguided and usually somewhat optimistic thinkers have, especially since the eighteenth century, written and talked much about making politics a science, about applying the methods so successful in the natural sciences to the study of man in society. Almost all of these men have been intellectuals, and almost all have thought that, by superimposing statistics, documentary evidence, and technical jargon on a lust to improve mankind along lines marked out by various abstract ethical ideas, they were being 'scientific.' Now only an obscurantist will deny the value of statis-

tics, evidence, patient research, and even of technical jargon, in scientific work. But, if we may be permitted to deal simply with an extremely complicated subject, the essential condition of all scientific work is that the worker must not, *while he is working as a scientist*, have any ethical ideas or emotions at all. This very simple statement will be incomprehensible to some people, which does not alter the fact that it is true" (pp. 259–260).

One is tempted to offer many excerpts from this very quotable book, since this might be the best way to urge that Professor Brinton's book be given a place in the library of every student concerned with the problem of demarcating political analysis as a technique from political philosophy as a way of life.

Brilliantly written, the biography by Comte de Saint-Aulaire sets forth the career of Talleyrand with great depth of understanding. Both biographers reach much the same evaluation of Talleyrand. "Weighed in the scales of history," Saint-Aulaire writes, "what remains of his work —the integrity of our frontiers, Anglo-French friendship, and Belgian independence—are the best possessions of France and Europe, provided that they learn in his school the art of harmonizing them."

Comte de Saint-Aulaire has written a notable biography. Crane Brinton has done this and more; his book offers an essay in political theory worthy of being read and reread.

E. Pendleton Herring.

Harvard University.

The Genesis of Napoleonic Imperialism. By Harold C. Deutsch. Harvard Historical Studies, Volume XLI. (Cambridge, Mass.: Harvard University Press. 1938. Pp. xxi, 460. $4.50.)

The following rather unorthodox review of Professor Deutsch's substantial volume, characterized in the preface as "a study of Napoleonic statesmanship at its zenith," is written by a political scientist who is not a professional historian, specializing in Napoleon's era. Hence the reviewer frankly admits that he is not competent to do full justice to a book which utilizes a good deal of archival material little investigated before, in particular from the *Haus-, Hof- und Staatsarchiv* in Vienna. Manifestly, the volume's essential value lies in its contributions to the diplomatic history of the period. To the reviewer, it seems to bring out more clearly than other works in English the important position of some of the minor figures on the European chessboard, especially of the German middle states of Bavaria, Baden, and Hesse-Kassel, which, prior to the formation of the *Rheinbund*, maintained a strategical position between France and Austria not unlike that held by Poland and Czechoslovakia today between Germany and Russia. The astute maneuverings of Max Joseph's minister,

Count Montgelas, whose reforms have left on Bavaria the lasting imprint of Napoleonic influence, are an interesting illustration. On the other hand, it seems that more weight should have been placed on the moves and countermoves in Italy, the importance of which Guglielmo Ferrero has revealed recently.

Diplomatic history, however, is only ancillary to political history. Since the reviewer writes as a political scientist, he may be forgiven for rather commenting on than critically analyzing Dr. Deutsch's book. The main problem of Napoleon's foreign policy—forever debated and perhaps never to be confirmed authentically—may be summed up in a number of mutually conflicting theories. Either the guiding principle was, from the beginning to the end, a concerted effort to crush England, "*les tyrans des mers*" (if this thesis is correct, the coalitions from the third onwards were only "by-products" of this momentous undertaking). Or, Napoleon was intent on safeguarding "the natural boundaries of France," most of all the Rhine frontier, as inherited by the French Revolution and crowned by Marengo and Hohenlinden (A. Sorel). This interpretation would square nicely with another theory to the effect that Napoleon sincerely desired peace—an offensive peace, to be sure. From this angle, Napoleon may appear even as a frustrated pacifist (as contended by A. Levy in *Napoléon et la paix* [1902] and G. Carton in *Napoléon anti-militariste* [1902]). Another theory (F. Masson) considers Napoleon's foreign policy merely a result of dynastic planning for the establishment of thrones for his Corsican clan and ultimately for guaranteeing the Imperial patrimony to his son. Finally, the hypothesis has been brought forward—and this theory is but slightly touched upon by Dr. Deutsch—that Napoleon was allegedly fascinated by what the French historians call *le mirage oriental* (Ed. Driault, *La politique orientale de Napoléon* [1914], and P. Muret, in *Revue d'histoire moderne et contemporaine*, Vol. 18, pp. 177 ff, 353 ff. [1903]) —a theory which, in itself, may be subordinated to the anti-British plan, or *vice versa*.

Dr. Deutsch is inclined to subscribe to the anti-British thesis: "For it is my opinion that in the plan to conquer England by a direct invasion lies the key to the whole Napoleonic policy from the resumption of the war in 1803 to the eve of Austerlitz in 1805" (p. viii). But the anti-British interpretation leaves the riddle of the formation of the third coalition and the famous *volte-face* of Napoleon after Boulogne more or less unsolved. It may even be contended, as Driault tried to demonstrate (*La vraie figure de Napoléon* [1929]), that Napoleon's hegemony over the continent aimed at organizing Europe in defense of Western (or rather Mediterranean) civilization against the onslaught of the Eastern hordes symbolized by Alexander as the successor of Attila and Genghis Khan. Thus the destruction of national independence wherever he came, and

the internal despotism in France and elsewhere, were only means toward a noble end. This is as good an explanation for the foreign policy of the Corsican master genius as any, and one at that which is fraught with modern connotations. But it does not explain the grave errors of the assassination of the Duke of Enghien or the invasion of Spain.

The political scientist is naturally inclined either to interpret the Napoleonic era in terms of contemporary parallels or to subject the present-day struggle for power to conclusions drawn from the European experience with Napoleon. Both methods may be wrong, but they are forced on an observer for whom history is more than a *tableau vivant*. What he cannot fail to realize in reading Dr. Deutsch's book is the striking lack of purposiveness in Napoleon's diplomatic strategy. One is bound to conclude from the author's careful analysis that the political game, even "at the zenith of Napoleonic statesmanship" (from 1802 to 1805), was nothing more than skillfully manipulated opportunism, and that the utter absence of direction was as catastrophic in Paris as it was at the courts of Europe. Only the English knew what they were after.

The truth—if there is any truth in history—perhaps is that it was Napoleon's nature that prevented the consolidation of so many amazing tactical successes into lasting strategical gains. There is no other common denominator for his successive efforts to separate England from the Continent, Austria from Germany, Russia from Western Europe. They were futile without exception in spite of the enormous advantage that Napoleon had in operating on the "inner lines"—again a telling modern parallel. The simplest solution seems to be that Europe, under the compulsion to come to a symbiosis of conflicting national aspirations called the equilibrium of powers, by force turns against any nation which tries to establish a hegemony under whatever pretext of a claim of superiority—again an ominous parallel.

The reviewer unhesitatingly and unreservedly acknowledges that Dr. Deutsch's scholarly and well documented presentation enriches the literature of an inexhaustible theme. The main objection which he feels that he should not suppress has to do with the mosaic-like technique applied in describing the bewildering mass of moves and counter-moves, obscuring rather than clarifying the basic lines on which the opposing forces move. Currents and cross-currents are not sufficiently set off, and thus the book lacks the crowning touch of the historian's craftmanship. The defect is particularly visible in the descriptions of the events around Trafalgar (p. 330 ff.) and Austerlitz (p. 403 ff.). Diplomatic history is indeed only the ante-chamber of political history.

KARL LOEWENSTEIN.

Amherst College.

Le Nationalsocialisme Allemand; Ses Doctrines et leurs Réalisations. Tome I: La conception nationalsocialiste du sens de la vie et du monde (Weltanschauung). Son rôle. Ce qu'elle travaille a détruire. By H. Mankiewicz. (Paris: Librairie Générale de Droit et Jurisprudence. 1937. Pp. xxiv, 248. Fr. 45.)

This is the first volume of an ambitious work on "German National Socialism; Its Doctrines and their Realizations," published by the *Institut de Droit Comparé de l'Université de Lyon.* In a preface to the book, Professor Edouard Lambert, director of the Institute, describes the aims of this enterprise. The purpose is to define the economic, political, and juridical institutions of the Third Reich in an entirely objective way. As a general introduction, all the main aspects of the National Socialist world-conception are analyzed. The first volume contains the negative tendencies of the *Weltanschauung,* those intellectual, social, and moral values which it tries to destroy. A second volume will show the constructive and creative endeavors of National Socialism.

The author has used an enormous quantity of books, pamphlets, and official and unofficial documents in his research, partly in the form of quotation, partly in precise condensations. There is scarcely a single sentence for which a source is not immediately given in the footnotes. Both from the viewpoint of detached impartiality and of the representativeness of its sources, the work is the most comprehensive and accurate presentation of the National Socialist doctrine that this reviewer knows. The first part of the book describes the fundamental assumptions of the *Weltanschauung;* the second, its criticism of the principles of the state emanating from the French Revolution (individualism, liberalism, democracy, parliamentarianism); the third, its criticism of the present situation of the liberal state; the fourth, its criticism of the bourgeois society in connection with Marxism as a fruit of liberal society.

The student of the new Germany will find a concise and reliable summary of all aspects of the German creed. Perhaps a single quotation will best clarify the intention and procedure of the author. Concerning the "mistakes of the French Revolution," he says: "German National Socialism combats the French Revolution and the doctrine of political liberalism to which it gave birth because it believes that these are the two elements which in the social life have led to the victory of [all] the false ideologies. As a matter of fact, it is the French Revolution which elevated the self to heaven one and a half centuries ago and repudiated all idea of community willed by God. Then the Goddess of Reason was enthroned. With the shouting of 'liberty, equality, fraternity,' they believed it would be possible to establish the happiness of all mankind. But what has resulted Werner Sombart describes in these energetic terms: 'Only

he who believes in the power of the devil can understand what has happened in the last 150 years in Europe and America. For what we have seen could only be interpreted as the work of the devil. One can even follow the roads upon which the devil has spurred men towards his goals.' 'The World War was necessary with its hecatombs of blood in order to liberate the world of the false creeds' of the Revolution of 1789" (p. 92).

I omit here the many footnotes pertaining to the quotation. All the tenets of National Socialism are treated in a similar way. It is an almost superhumanly dispassionate cross-section of the whole ideology, without the slightest personal judgment or reaction.

OSCAR JÁSZI.

Oberlin College.

Gustav Stresemann; His Diaries, Letters, and Papers. Vol. II. EDITED AND TRANSLATED BY ERIC SUTTON. (New York: The Macmillan Company. 1937. Pp. xix, 549. $6.50.)

This volume consists of a miscellaneous collection of material dating mostly from the beginning of the Locarno negotiations early in 1925 to Germany's entrance into the League in September, 1926. Excerpts from Stresemann's diary, speeches to party meetings, committees, press representatives, the Reichstag, etc., interviews with ambassadors and political leaders, inspired press articles, diplomatic notes and conventions, follow one another in helter-skelter fashion. The material is woven together by excellent short explanatory notes by the editor, and is arranged as best it can be according to subject-matter. The consequent lack of chronological continuity between sections is, however, disconcerting—the more so since so much is diary material.

Approximately half of the volume is devoted to Locarno. This is by far the most unified part of the book. The desire to secure the Rhineland from further French aggression and separatist agitation and to hasten the allied military evacuation led Stresemann to make the proposals which finally culminated in the Locarno pact. Germany's willingness to conclude arbitration agreements with her eastern neighbors played no small part in the success of these negotiations. Two attempts at a western pact in 1923, one under Chancellor Cuno, one under Chancellor Stresemann, failed partly because there was no mention of the East. Always against giving any definite guarantee of the eastern frontiers, Stresemann in a letter to the Crown Prince in September, 1925, characterized the three great tasks of German foreign policy as follows: " . . . (1) the solution of the reparation question in a sense tolerable for Germany and the assurance of peace, which is an essential promise for the recovery of our strength; . . . (2) the protection of Germans abroad, those 10–12 millions of our kindred who now live under a foreign yoke in foreign lands; . . .

(3) the readjustment of our eastern frontiers; the recovery of Danzig, the Polish corridor, and a correction of the frontier in Upper Silesia." Although not opposed to *Anschluss*, he was "quite clear that this not merely brings no advantages to Germany but seriously complicates the problem of the German Reich." He also desires the eventual return of the German colonies.

Part II of the volume, entitled "Within and Without," is a veritable omnibus. In this an address on "Goethe and the Wars of Liberation" and one in which Stresemann speculates as to whether Goethe left a secret manuscript which might be considered a climax to the *Wanderjahre* are worthy of special note. The last part of the volume deals with Germany's relation to the Powers after the negotiation of Locarno. Specifically, these concerned the increased tension with Italy arising over Tyrol, the alarm of Russia over the western pact, trade relations, and questions of minorities with Poland. The interpretation of Germany's obligations under Article XVI of the Covenant and Germany's demand for a permanent seat on the Council are recurrent topics.

Stresemann repeatedly stressed spiritual values, and bemoaned the fact "... that before the War and during the War we made the blunder of underestimating the effective force of the public opinion of the world and appreciating it as a political instrument." Rare as is this capacity among Germans, the world may be grateful that Stresemann possessed it to an extraordinary degree.

E. C. Helmreich.

Bowdoin College.

The Politics of Modern Spain. By Frank A. Manuel. (New York: McGraw-Hill Book Company. 1938. Pp. xiii, 194. $1.50.)

Modern Spain and Liberalism. By John T. Reid. (Stanford University: Stanford University Press. 1937. Pp. vii, 236. $2.25.)

Readers limited to descriptions in English of contemporary Spanish politics may find lengthier and more learned treatments of that subject than the first of these two volumes; but they are unlikely to find a book of similar dimensions which tells more about modern Spain and tells it more accurately or more gracefully. The author has written it from a background of journalistic experience combined with specialized knowledge of international labor conditions and some first-hand observations of recent events in Spain. The context of his work also displays a sympathetic understanding of nineteenth-century Spanish social and economic history. The result is a book packed with sage reflections and mature conclusions on political movements, events, and personalities of post-war Spain. Dr. Manuel is to be commended particularly for the care with which he has described the rôle of the *cacique*, the position of the Spanish

church, the unusual relations between the army and the civil branch of government, the non-pragmatic character of Spanish politicians, and the peculiar Spanish emphasis upon regional autonomy. It is his description of these phenomena and of their impact upon Spanish politics that gives his book an authentic and convincing tone. Noteworthy, too, is the care with which he analyzes Spain's left-wing political and labor movements, most of which are at present combined in the popular front as supporters of the Loyalist government. Students, confused by the intricacy of this part of the Spanish political landscape, will find Dr. Manuel an excellent guide. He appears to have no difficulty whatsoever in finding his way about the maze produced by one or two brands of republicanism, at least two brands of socialism, orthodox and Trotskyite communism, anarchism and anarcho-syndicalism, and variations of any of these, produced by an admixture with regional separatism.

The author's rather obvious pro-Loyalist sympathies, plus, perhaps, the limitations of his own information, have apparently prevented him from making as thorough an examination of the personalities and groups clustering about the cause of General Franco as might be desired. Nevertheless, what he says about the Burgos régime is scrupulously fair, and his conclusions and observations are not likely to be invalidated by time. The book's chief limitations are quantitative and structural, those resulting from the condensation of his material and those imposed by the pedagogical requirements of preparing its contents for classroom use. These shortcomings, however, will not detract from its timeliness; nor will they prevent it from being accorded an honorable place in that excellent company of political monographs which Dr. F. M. Marx of Harvard is editing for the publishers.

Mr. Reid's book is the more academic and "scholarly" volume. It includes an exhaustive collation of the socio-political views of two of Spain's contemporary novelists and essayists, the Basque, Pió Baroja, and the Andalucían, Ricardo León. As the title of his book might imply, Mr. Reid classifies the views of both as Liberal. The considerable difference in the attitude which the two authors respectively exhibit on such subjects as the church, the army, science, and political and social institutions in general, as well as their mutual rejection of many of the traditional tenets of Liberalism, make the defense of Mr. Reid's classification a somewhat formidable task. The task is not made less formidable by the occasional ambiguities or inconsistencies into which the exigencies of plot or character creation, or sheer personal idiosyncracy, betray each author. To the uninitiated layman, moreover, it would seem that since both Baroja and León have extended their support, tacitly at least, to the Franco régime, the task of making the label of Liberalism stick to either of them would have become a well-nigh impossible one. As it is, not a

little ingenuity in the art of logic and definition and more than a fair amount of insight into comparative philosophy have been required for Mr. Reid to translate the data of his researches into coherent and plausible conclusions.

In the past at least, social philosophy in Spain has probably depended more directly upon purely literary sources for its inspiration and development than it has in any other European country. Such being the case, we may agree with the author's assumption, explicit in his preface, that his book will contribute to an understanding of the practical political situation in Spain today. His researches, moreover, have been conducted in so painstaking a manner and presented in so fluent and lucid a style, that the results must at once assume a place of importance as a reference source for scholars who may be interested in the evolution of Spanish social thought.

ARNOLD J. ZURCHER.

New York University.

The Plough and the Sword. By CARL T. SCHMIDT. (New York: Columbia University Press. 1938. Pp. 175. $2.50.)

Government in Fascist Italy. By ARTHUR STEINER. (New York: McGraw-Hill Book Company. 1938. Pp. 142. $1.50.)

The Syndical and Corporate Institutions of Italian Fascism. By G. LOWELL FIELD. (New York: Columbia University Press. 1938. Pp. 203. $2.75.)

Of three books on Italian Fascism published this year, one—that by Carl T. Schmidt—is truly excellent. Professor Schmidt is the first scholar to give the English-speaking world a picture of what Fascism has meant for the rural masses of Italy, the majority of Italy's population. "Only with Fascism have the peasants come into their full rights," Mussolini has said; and in supposed proof of these words are quoted the much advertized achievements of Fascism: the battle of wheat and land reclamation. Professor Schmidt has analyzed both of these Fascist claims and concludes that undoubtedly Fascism has increased the wheat output of the country by forty per cent, chiefly by more intensive cultivation, but that this has been at the expense of other products which could have been, and formerly were, raised on Italian soil more economically than wheat can possibly be (notably citrus fruits and sheep). In fact, the cost of wheat production being far above the world price for wheat, Italy has imposed heavy import duties on grain, resulting in higher prices to the Italian people, which in turn have been reflected in a steady decline in the consumption of wheat to levels lower than those known immediately before the World War.

In like manner, Professor Schmidt has sought the essential facts behind

the Fascist boast of gigantic land reclamations, and has found (1) that this work was initiated and actively carried on for a quarter of a century before Fascism came into power; (2) that by admission of the Fascist under-secretary for land reclamation "too many works have been carried out with insufficient consideration of their economic aspect, resulting in heavy burdens on the land which today are very hard to carry," and (3) that, contrary to the general idea that land reclamation has benefited the poor peasant, "the rural masses are given no preferential rights to reclaimed land, although most of the costs of reclamation are borne by the public treasury. Whoever happens to own the land will profit from the government subsidies . . . The bulk of Italian farm land is still owned by the aristocracy and the wealthy middle class."

Having thus exploded two favorite Fascist claims to glory, Professor Schmidt goes on to show that the status of the Italian land-worker is as miserable, if not more so, than it has been since Italy's unification. For example, pellagra, a deficiency disease eradicated at the turn of the century, has made its reappearance. But, claims Fascism, the régime has attached the worker to the land. True, but by means of paying him for his labor in the produce of the land rather than in money wages, which system results in making it difficult for the worker to change his employment.

Professor Schmidt summarizes the results of his scholarly, well documented study in a final chapter, significantly entitled "The Discipline of Poverty," in which he shows that "the peasants and workers of Italy have always known poverty and hunger," but Fascism has done nothing to better their lot; on the contrary, it has aggravated it. "To point, . . . to factors in the world depression as an explanation of Italian difficulties is not consistent with the claim that Fascism represents a new social and economic order, different from, and not subject to, the defects of capitalism."

In contrast to Professor Schmidt's book, the other two studies are superficial. Arthur Steiner's *Government in Fascist Italy* (McGraw-Hill Book Co., pp. 142) is a readable treatise, but it is merely a description by an outsider of the mechanism of the Italian Fascist state, which apparently works. Nowhere in this study, nor in G. Lowell Field's *The Syndical and Corporate Institutions of Italian Fascism* (Columbia University Press, pp. 203), are questions raised such as the following: At what cost to the people of Italy have these Fascist institutions been established? Have the Fascists made good their promises of creating a new social order, immune from the failures of capitalism, yet avoiding the establishment of socialism? Dr. Field several times approaches the underlying issues when he mentions that the representatives of the workers do not come from the working-class, that in accepting court decisions for wage reductions with

acclaim these representatives have put themselves into a strange position, and that the employers are better off in their syndical organizations and more influential in the corporations than are the workers. But he does not go on to ask why this is so and whether it must be so, given the structure of the corporate state. What the two books do is merely to give a skeleton outline of Fascist institutions: the party, parliament, the syndicates, the corporations, and the executive office represented by Mussolini.

CARMEN HAIDER.

New York City.

Japan in Transition. By EMIL LEDERER AND EMY LEDERER-SEIDLER. (New Haven: Yale University Press. 1938. Pp. 260. $3.00.)

The Japanese people, whatever their political system may be, are faced in the present period of their history with certain fundamental economic and social problems. In the present state of public emotionalism, it takes courage and balance to discuss these problems without falling into the error of discrimination among "facts" and making easy, sweeping, simple "explanations" and *exposés*. It is, or should be, possible, even now, to examine Japan and the Japanese without using an incident or a class to indict a nation; conversely, the scent of sakura and the geisha's gayety seem irrelevant. If we are to grasp the reality of Far Eastern affairs today, it is necessary to see Japan through glasses that are neither red with blood nor smeared with unctuosity. The authors avoid both extremes and probably come near the truth.

Their first emphasis is to warn against the application of Western standards to Japan and its people. Too often we use glib terms to characterize aspects of Japanese life, terms woefully misleading in their inaccuracy and effective chiefly in concealing basic motivations of a whole nation. For example, the moment one senses the extent to which the forces of religion, myth, and history are fused in Japan, the use of the term "ancestor worship" takes on new and potent meaning. "The ancestors are not gods, nor are they merely symbolic. To the Oriental they are the past, which flows into the present, the tissue of inextinguishable life like the present itself. The ancestor cult is by no means limited to the broad masses of the nation. Even in the homes of the enlightened Japanese, educated in the West, the ancestor shrine is a characteristic feature and sacrifices are offered to it regularly. The modern Japanese . . . has no thought of abandoning the Japanese myth, with its assumptions of continuity with the past and of the continued life of preceding generations." The Emperor as a god-leader of his people provides a basis of patriotism and loyalty which transcends all Western political concepts.

Failure to sense the hold of this belief on the Japanese nation is all too

common and may lead to serious underestimation of the lengths to which the Japanese nation can be led." In the West this idea of an emperor-deity is regarded as the ideology of the militaristic and capitalistic circles. It does, to be sure, serve to prop the existing power relationships. But this does not give the full measure of its hold. Loyalty to the Emperor is the spiritual bond which holds together the whole nation. The imperial idea is the most concrete symbol of the entire style of living, of the entire culture and tradition of Japan, as well as of the social hierarchy." And yet, basic as this belief is, the authors find signs of its weakening in a small but growing minority—the industrial proletariat. If this work contains for Japan a warning, it is that the spread of capitalism is bound to undermine the political basis of the nation.

Much of the contrast in the development of China and Japan can be explained and understood in the light of this principle of loyalty. In Japan, "loyalty is the one absolute duty, the supreme obligation—loyalty toward parents, toward the teacher, toward the temporal lord and emperor. In the hierarchy of loyalties, loyalty to the sovereign always comes first. In striking contrast to Confucian principles, parents, wife, children give way to the emperor in case of conflicting loyalties. To the Chinese, such a violation of family affection is inconceivable." Thus, in spite of an immediate background of feudalism, Japan ended her exclusion era in the nineteenth century possessed of all the prerequisites for the growth of a modern power state—"class stratification, a militaristic spirit, a strong bureaucracy . . . " When the country entered upon the Westernization era, it sought to combine "in its own way the principles of loyalty, of group life, and samurai morals with the institutions and ambitions of a modern power state." The resulting anachronistic mixture confuses Westerners; it is replete with contradictions, for it is a "modern military mass-power state resting on feudal ideology." The groups in power are well aware that the ancient traditions which deify the Emperor are the basis of the Japanese state in its present form and strength; hence the nervouness about "dangerous thoughts."

This apprehension concerning "dangerous thoughts" may well be justified to the extent that Japan seeks to combine Western capitalism with her own peculiar political principles. "The destruction of this tradition (allegiance to the Emperor) is nevertheless presaged by the spread of capitalism, with its tendency to expose the weakness of all positions founded on mere tradition, and to strip them of their prestige. The labor movement, which is making a belated and feeble threat to alienate the masses from the old state, is only a reflection of this capitalism; the work that the weak labor movement is just beginning among the masses has already been carried far among the bourgeois strata by capitalism itself. Thus the old forces in the Japanese state are staking everything on halting

the destructive tendencies inherent in the development of modern capitalism. But since their political objectives require the building up of the armed forces, and therefore a rapid pace of industrial growth, their difficulties are only increased by the measures they take to curb the dangers." Although an observer may question whether militarism is a cause or an effect of industrialism, one must agree that the whole industrial system threatens Japanese culture and the political principles inherent in that culture. There lies the heart of the problem of Westernization and the reason behind the present reaction against the West and all it implies.

Japan's aggressive foreign policy has a broader basis than the imaginations of militarist leaders. "Japan, from the moment of her entry into modern history, had the form of a fully developed national state. It is the deification of the imperial idea, the hypersensitivity of national feeling, the warning example set by the helpfulness of China, that at an early date popularized in Japan an aggressive policy which a large portion of the population look upon as 'just,' and even as purely defensive. For this reason, the government is repeatedly pushed on as soon as it shows signs of compromising with the status quo. The army is the most obvious standard-bearer of such an aggressive policy, but it finds support in a widespread national feeling. Recently "Japan's policy in the Far East has represented not only a striving for greater power but also the effort of her ruling class to solve real problems that face the nation." Excess population stands out as the most pressing of these real problems, and such facts as Manchoukuo, world trade drive, and North China autonomy, are essential repercussions of attempts to solve these problems.

"During the next fifteen years at least, the supply of workers will increase by 300,000 to 500,000 per year, and neither agriculture nor industry, including small crafts, is able to absorb this increase." For them must be found either jobs (which means new markets and new raw materials abroad) or new land (which means new colonies). In either case, Japan must expand.

The outlook is not encouraging for Japan or for peace in the Far East. "It is scarcely conceivable that she can succeed in her efforts toward the domination of the entire East. And if she does not succeed it is scarcely conceivable that she can solve the deep-rooted problems that beset her at home: the tremendous pressure of population; the amount of arable land per person scarcely larger than a tennis court; the necessity of importing the main raw materials and paying for them with the labor of poorly nourished workers; a great part of the national dividend spent for the defense of a country which no one would attack; an ancient culture which bequeaths its people pride and audacity, and a people ready to conquer the world and to dominate it, but at the same time lured into an alien Western civilization; the ruling classes sensing the threat from with-

in and having nothing to set against it but an ideology unintelligible to the uprooted masses and an armament against Powers which month by month increase their strength. It may well be that the only possible solution for this nation is to transform itself into a new Japan that will have nothing in common with the old except a name."

These quotations, taken largely from excellent chapters on "Religion, Myth, History" and "The State: Japan," are samples of an able analysis of the basic factors which underlie Japan's actions and attitudes. Here is neither devil nor angel theory. In recent years, Japan has pursued a policy which is self-condemnatory. But with propaganda flagrant and patent on both sides, we still need balanced studies; they will not justify the past, but they may help us to anticipate the future.

A. E. HINDMARSH.

Harvard University.

Strong Man of China. By ROBERT BERKOF. (Boston: Houghton Mifflin Company. 1938. Pp. xv, 288. $3.00.)

The Invasion of China by the Western World. By E. R. HUGHES. (New York: The Macmillan Company. 1938. Pp. xvi, 324. $3.50.)

Japan in China. By K. K. KAWAKAMI. (London: John Murray. 1938. Pp. xix, 188. 5s.)

The undeclared war of Japan against China has created a very active market in books on the Far East. Among the flood of new publications are propagandist volumes, like that of Mr. Kawakami, books for the occasion, possessing more permanent value, like Mr. Berkof's, and the productions of scholars, happening to pass through the press at this juncture, like the work of Mr. Hughes. These different types must be appraised by different standards of value.

Mr. Kawakami is a veteran journalist with a flair for international politics and a row of timely volumes on topics of the day to his credit. Long residence in the West has given him a sympathetic understanding of the Western, and particularly of the American, point of view, but his professional connections are Japanese. The present volume was written last autumn and was designed to explain the motives and aims of the Japanese invasion of China. The bombing of the *Panay* and *Ladybird*, which the author describes in his preface as "a shocking incident, which tarnished Japan's escutcheon for all time," seriously embarrassed the author and greatly impaired the persuasiveness of his explanation. The subsequent development of Japanese policy in China has already rendered this candid but unconvincing piece of special pleading obsolete.

Mr. Berkof, manager of the Shanghai bureau of the United Press Association, like Mr. Kawakami, is a veteran journalist who combines un-

usual knowledge of both West and Far East. His book is the best informed and most competent of the current crop of publications designed to give Americans a better acquaintance with the leading personality on the Chinese side in the present portentous war. The author pays less attention than political scientists might wish to the political thought of the Chinese leaders and to the political effects of the revolutionary ideology. Political structures and processes also receive inadequate consideration from the specialist's point of view. But the volume is capable of contributing substantially to the political scientist's understanding of Far Eastern politics as well as illuminating one of the great political personalities of modern times.

Mr. Hughes, who is reader in Chinese religion and philosophy in Oxford University, prepared his volume as one of the series of "Pioneer Histories" now in process of publication. This series was designed to provide "broad surveys of the great migrations of European peoples," and this particular volume was planned by the author to cover the cultural penetration of China by the West. The author's professional studies and long experience in the Far East have given him extraordinary competency for the task, and the resulting volume will bring fresh lustre to English scholarship in the field of sinology. For the interested reader, it offers a fresh, sympathetic, and well-balanced interpretation of the impact of the West upon China. For the political scientist, it offers the best up-to-date introduction to the serious study of the political problems of the Chinese Republic.

The perusal of these three volumes, as of any fair sample of the current output of books on the Far East, suggests many reflections extending beyond the area covered by these particular compositions. Perhaps the most pertinent of them relates to the perennial question, What in truth is China? It is apparent that Occidentals are prone to make a great mistake in their thinking about Chinese problems because of their natural tendency to think in terms of their own state-system. China, though treated by the West as a national state like an ordinary member of the state-system of Western Europe, is patently a political entity of a different order. Growing dissatisfaction with the practical operation of the European state-system should enable Americans at least to form a fairer estimate of China for what she is—a political entity whose mere survival constitutes a standing indictment of the system of intensely nationalistic sovereign states lately held in such high esteem in the West.

ARTHUR N. HOLCOMBE.

Harvard University.

The Philippines; A Nation in the Making. By FELIX M. KEESING. (Shanghai: Keeley and Walsh. Pp. x, 137. $1.50.)

This book makes no pretense of being a scholarly work. It was com-

posed chiefly with an eye to satisfying the needs of school children in Hawaii who might be interested in the Philippine Islands. In the words of its author, it is "intended primarily for senior high-schools, colleges, women's clubs, and similar organizations." Nevertheless, the author is himself a very competent scholar, and this particular work, though rather elementary in character, gives an excellent and well balanced picture of the Filipino peoples, and the problems which confront them at the present day.

In a little over a hundred and thirty pages, Professor Keesing gives a brief but succinct account of the geographic background, the racial composition, the history, and the present political, social, and economic conditions of the Philippines. He even finds space to deal with modern Filipino literary and artistic movements. The section devoted to political affairs is very deftly handled, but too brief and too sketchy to be completely satisfactory. The most important portion of the book is that which deals with economic conditions, especially the relation between the all-powerful landlords and the landless peasantry and its effect upon the political situation. Though dealing with a subject which has been the subject of bitter partisanship, the author strives to be objective and impartial.

As Professor Keesing points out, recent developments in the Far East have so filled the Filipinos with fear of Japanese aggression that many erstwhile extreme nationalists have modified their position, and many such persons wish to put off indefinitely the complete independence promised the Philippines in 1946. In view of this fact, the Philippine question, once thought settled, is likely to become once more, in the near future, a controversial issue. Accordingly, the appearance of an able general survey of the whole situation, suitable for undergraduate outside reading, is to be greeted with satisfaction.

WILLIAM M. MCGOVERN.

Northwestern University.

Bolívar and the Political Thought of the Spanish American Revolution. The Albert Shaw Lectures in Diplomatic History, 1930, Walter Hines Page School of International Relations. By VICTOR ANDRÉS BELAUNDE. (Baltimore: The Johns Hopkins Press. 1938. Pp. xxiv, 451. $3.50.)

In this volume, a Peruvian scholar who is widely known in South America and in the United States furnishes English readers a comprehensive, thoughtful, and original survey of the ideology of the great revolution that separated the Spanish colonies from the mother land. As the author suggests in his preface, the struggle for independence in the Spanish Indies created a fresh political life which led to the creation of new institutions that eventually suffered from such disintegrating influences as the illiteracy of the mass, racial instability, and barbarous *caudillos*. After several

chapters devoted to the historical background of the movement which separated the Spanish colonies from the mother land, Belaunde outlines the rôle of Bolívar in that movement and describes in detail his republican, nationalistic, and international faith.

Much less attention is paid to the political ideas of the Liberator's great rival, José de San Martín, and to minor figures. In the last part of the treatise, considerable attention is given to schemes for the founding of monarchical governments in Latin America. Making wide use of secondary accounts, as well as of sources, the learned author does not hesitate to differ in his interpretation of Spanish-American ideology with the Venezuelan littérateur, José Gil Fortoul. In appendices, Belaunde prints supplementary material which is largely taken from the works on Bolívar of the Venezuelan scholar, Vicente Lecuna. Although the analytical arrangement of the "Selective Bibliography" seems peculiar, it contains a very useful list of articles, books, and pamphlets concerning the political thought of South American leaders during the heroic age of Spanish-American history. Students of Latin-American history and politics will regret that the learned author did not devote more space to the political thought of revolutionaries of Mexico. Nevertheless, they will find the volume extremely useful in the study of the heroic age of Spanish South America.

WILLIAM SPENCE ROBERTSON.

University of Illinois.

Republican Hispanic America; A History. By CHARLES EDWARD CHAPMAN. (New York: The Macmillan Company. 1937. Pp. 463. $4.00.)

A History of Latin America. By DAVID R. MOORE. (New York: Prentice-Hall, Inc. 1938. Pp. 826. $4.00.)

Professor Chapman brings to the writing of his volume his prolonged scholarly researches in Hispanic America and his experience in living in some of the republics. The study supplements his well received *Colonial Hispanic America.* The material is not presented in a series of twenty studies outlining the development of each country. Instead, the main portion of the volume is given over to analyses of a group of topics covering factors common to all or illustrative of conditions with which many have had to deal. The latter portion of the book reviews in briefer fashion the history of the various units.

This method of discussion is used with a high degree of success. Too often volumes in the same field give the reader the feeling that he is studying a catalog-like publication in which a set formula is followed for each unit analyzed. Professor Chapman seeks, on the other hand, first to trace the outlines of the broader conditions which have made Hispanic America

what it is, and thus to save the reader from failing to see the forest because of the trees.

Another characteristic sets this book off from many in the same field. Many writers on Latin America feel called upon to praise what they find commendable but to minimize or leave unstated the shortcomings of the developing nations. A few go to the other extreme. Professor Chapman does neither. Accomplishments are praised in the measure he feels they deserve, but he does not fail to call a spade a spade. It is a procedure worthy of imitation, and in the long run better calculated to promote good understanding than the avoidance of criticisms practiced by many of those who seek to assure "good neighborhood."

Professor Moore's attractively printed volume covers both the colonial and republican periods. It is readable, provided with excellent maps, and comprehensive, with the merits and limitations of all volumes which attempt the history of twenty nations in an average of forty pages to each. There is only an occasional attempt, particularly in the discussion of the republican period, at appraisal of the general conditions controlling Latin American developments. For those students who must confine themselves to a single-volume review of Latin American developments, this is a valuable survey. The author has been at pains to emphasize the most recent political developments in each of the states discussed.

CHESTER LLOYD JONES.

University of Wisconsin.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

In compiling *The Ratification of the Twenty-first Amendment to the Constitution of the United States: State Conventions, Records, and Laws* (University of Michigan Press, pp. xi, 718, $6.00), Everett S. Brown has preserved for the legal and historical scholars of the future a set of documents which can hardly help but be of prime importance. A large part of the volume consists of a literal reprint of the records of the state conventions which ratified the repeal of the prohibition amendment. These records consist of journals, proceedings, and debates, and record the lists of delegates, the oaths taken, the officers elected, the committees appointed, the discussions and debates, and the resolutions which were passed. Many of these records would soon have been lost had not a compilation of them been made. While many of the records were printed, some were only mimeographed, others were published only in newspapers, and a number were available only in typewritten form. A second part of the volume contains a compilation of the state laws providing for the ratifying conventions. The preservation of these statutes is, of course, not so necessary since they are available in the session laws published by each of the states.

Nevertheless, it is exceedingly convenient to have them brought together in a single volume, especially when that volume also contains the proceedings of the conventions. Each of the parts is preceded by a note in which is presented the essential background material necessary for a study of the convention records or state legislation. Throughout the volume there is abundant evidence of painstaking and accurate scholarship and high standards in the editorial work. Future research may be based upon it with confidence. Both the laws and the proceedings illustrate the wide variations in form which state action took. Few of the states followed the pattern which had been laid down for them in the ratification of the original document by the conventions. This raised a serious question concerning the validity of repeal—a question which was not laid to rest until the decision of the United States Supreme Court validating the Twenty-first Amendment. If the convention method of ratification is to be used in the future, it would seem desirable that the process be regularized and made more uniform throughout the United States. But without a compilation like that which Professor Brown has so competently made, any proposal for uniformity could only succeed by accident. It is to be hoped that leaders of public opinion, Congress, and the state legislatures will study this record of experience before further use is made of the convention method of ratification. But perhaps it would be better, after all, as Professor Brown suggests, to dispense with the convention fiction, and to provide for a direct popular referendum on amendments to our fundamental law.—RODNEY L. MOTT.

In *State and Local Barriers to Interstate Commerce in the United States* (University of Maine Studies, Second Series, No. 43, pp. xiv, 181, $0.75), Frederick Eugene Melder sketches briefly the bitter trade war among the states in the decade preceding 1789, discusses summarily the constitutional provisions for a federal commerce power designed to wipe out economic sectionalism and to perpetuate a "free national market," and then proceeds to develop the thesis that, despite the Constitution, states have managed to establish themselves in some respects as "isolated" areas, with free movement of economic values non-existent among them. The author points out that while the Supreme Court has nullified state legislation which imposed a "direct" burden on interstate commerce, it has found no objection to legislation which appeared to burden interstate commerce only "remotely." Yet such legislation has in fact discouraged and restricted the free flow of commerce among the states. A comparative analysis of statutory provisions reveals, for example, that states have shown preference for local citizens in the spending of public funds and in granting public employment. Showing about the same degree of imagination and foresight that one might expect to see reflected in the pronounce-

ments of a small-town chamber of commerce, legislatures have erected interstate barriers as effective as tariff walls by enacting legislation establishing plant and animal quarantines and "nuisance" motor vehicle codes, restricting the immigration of indigent persons, directing discriminatory taxes against foreign corporations, and forbidding exportation of natural resources. A "scarcity consciousness," especially prevalent during times of economic depression, is said to be responsible for the varied attempts of local interests to preserve limited home markets and resources for themselves, in accordance with the philosophy that while "America is for Americans," yet California must be reserved for Californians, and Peoria for Peorians. The author offers no generalizations with respect to the ultimate effects of state isolation measures on the national economy. However, he suggests that protective legislation brings only temporary benefits, and fosters a spirit of sectionalism and ill-will which may retard governmental reforms; although he does not consider the extent to which the adoption of interstate compacts and uniform legislation may, at the same time, be breaking down state provincialism and encouraging governmental reforms. Well documented and containing interesting statistical data, this monograph forcefully calls attention to a problem which appears to be one of increasing social significance, particularly in view of the distressing practice of numerous states in bidding against one another and proffering generous tax exemptions and cheap labor in an effort to lure foreign industries away from their present sites.—ALDEN L. POWELL.

Number 13 in the *Special Report of the State Tax Commission* is "The Fiscal Aspects of State and Local Relationships in New York" (Albany: J. B. Lyon Co., pp. xiv, 433), by Paul E. Malone. The study is divided into two parts and includes tables and an excellent bibliography. Part I, describing the development of the various governmental units and the evolution of their functions, deals separately with the state, town, county, city, village, and special district in New York. Criteria are established for determining the adequacy of the present governmental structure, and a program is suggested for reorganization on the basis of the evaluation under these criteria. Part II contains separate chapters devoted to five major functions (education, revenue administration, highways, welfare, and public health), and the distribution of each function among the governmental units is described with a view to determining the capacity of the respective units to perform the various services. The final chapter is worthy of a wider reading than it will probably receive as part of a tax commission report. As the author suggests, "there is probably no other commonwealth in the Union presenting so fertile a field for the study of the central government and its relations with the minor subdivisions as the state of New York." On the basis of a most thoroughgoing study of

these conditions, both from a structural and a functional standpoint, valuable conclusions inevitably result. In one phrase, the author summarizes conditions as they exist: "the confusion of objectives and the multiplicity of devices." Unfortunately, his conclusions cannot be abstracted briefly without destroying their value, because the author offers no simple solutions. He is insistent upon the necessity for determining first "the kind of local government and the character of state and local relationships that will best serve collective wants . . . before even the slightest short-run objectives can be developed with certainty." This sound philosophy is demonstrated throughout the study.—DOROTHY SCHAFFTER.

The latest edition of a yearbook which has become a standard reference for municipal officials and students of public administration is the *Municipal Yearbook, 1938* (International City Managers' Association, pp. viii, 619, $5.00). This is the fifth volume of the series, and like its predecessors is edited by Clarence E. Ridley and Orin F. Nolting. The series is an outgrowth of the City Manager Yearbooks which began to be issued in 1914 and continued until the first of the Municipal Yearbooks—the volume for 1934—made its appearance. The editors' main purpose is to present factual data on the various phases of municipal activities, to keep the busy officer informed of the current developments in his field, and to suggest sources of further information to assist in the solution of administrative problems. The book follows the general plan of the earlier volumes and is divided into five parts of comparable size. The first consists of twenty-six short résumés of the year's developments in as many fields of activity. These are written in large part by officers of the various national professional associations concerned with administrative services. The second part is factual data regarding governmental units gleaned by sectional writers from officials and other correspondents throughout the country. The part on municipal personnel contains a directory of public officials and tables relating to aspects of public employment. There are three articles on trends in municipal finance and a final part on "sources of information" designed to be helpful to those confronted with concrete administrative problems of organization or management. A useful index completes the volume. While designed essentially as reference books, these volumes, noting as they do the major events of the passing years, present material of inestimable value to the historian and to students of social trends over the period covered by the series.—S. GALE LOWRIE.

Clarence E. Ridley and Herbert A. Simon have performed a valuable service to students and practitioners of administration by summarizing in a convenient brochure, *Measuring Municipal Activities* (Chicago: In-

ternational City Managers' Association, pp. 102, $2.00) the progress made during the last twenty-five years toward the development of administrative measurement criteria. The present status of measurement technique for eight line functions (fire, police, public works, health, recreation, welfare, education, and libraries), and three line activities (personnel, finance, and city planning), is admirably appraised in as many concise chapters, to which are appended an extensive bibliography and a series of suggested monthly report forms. While fully cognizant of the long road ahead before we shall have adequate composite standards of performance, the authors set a hopeful note for the future of the science of governmental measurement. As an important by-product of their stock-taking of what has already been accomplished, they themselves suggest the need of a generalized concept of administrative efficiency in terms of "the ratio of the effects actually obtained with the available resources to the maximum effects possible with the available resources." Only if built upon some such broad base as this, they think, can measurement devices attain their fullest usefulness.—WALTER R. SHARP.

William Anderson's *American Government* (Henry Holt and Company, pp. 1180, $3.75) is probably destined to be widely accepted as the best text now available on the subject. The approach in this comprehensive volume is definitely functional, but structure is adequately described and much valuable fresh material has been added. The organization is excellent, though not conducive to segregation of national, state, and local content. The literary style is simple, lucid, occasionally pedestrian. The average reader would appreciate more specific illustrations, more references to personalities, cases, campaigns, etc. Nearly every chapter reveals evidence of Professor Anderson's scholarly and enlightened reëxamination of the primary sources. As is proper in a functional text, he seeks most to explain, to interpret rather than describe. The work is distinguished by his understanding of American governmental processes and the problems involved in operating a democracy in the complex modern world. His analyses of political and administrative difficulties occasioned by the transition of our rural agricultural society into an urban industrial nation are particularly keen. Much of the philosophy underlying the volume can be gained from the concluding sentences of the Epilogue: "The best thought may be that which throws back upon the individual or upon the local community much of the responsibility for action. Just now, certainly, the great need seems to be for more governmental action, and more centralization. Once the present objectives have been accomplished,and within the framework of our new administrative society, however, man may well find a new freedom that transcends anything that he experienced in the days that have gone before. It may be a better freedom, too,

largely because it is accompanied by a greater social and economic security than the people have every known." While much recent material has been included, some chapters seem to "date." Those on Legislatures and Legislation, it will be ventured, were written in 1935 and imperfectly revised just before publication.—O. R. ALTMAN.

Municipal Finance Legislation, 1937 (Public Administration Service, pp. 64, $1.00), by Irving Tenner, of the research staff of the Municipal Finance Officers' Association, is a digest of 1937 state legislation affecting the finances and financial administration of cities. The excellent features of the study are that it is compact in form and yet not too abbreviated, that the material is carefully and conveniently arranged, and that the author, in an interpretative summary of eleven pages, gives us a bird's-eye view of the entire situation. The major subjects in this field which occupied the attention of the 1937 legislatures were municipal indebtedness, tax exemptions, new sources of local revenue, state supervision over local finance, federal-local relationships, public depositories, pensions for policemen and firemen, and the establishment of revenue investigating commissions. More specifically, the author's analysis reveals such things as continued leniency toward delinquent taxpayers; the extending of tax exemption privileges to housing projects and housing securities, homesteads, particular industries, municipal and other governmental property; the enlarging of municipal borrowing powers; the enactment of enabling legislation to permit local governments to share in the grants made by the federal government for public welfare activities; provisions for the allocation of state-collected, locally-shared gasoline taxes, sales taxes, and liquor taxes; the establishment of state supervision over budgeting and accounting. This is an invaluable reference source, and students of public finance continue to be under heavy obligation to Mr. Tenner and the Municipal Finance Officers' Association for preparing these digests.—MARTIN L. FAUST.

Thirteen presidents of the United States have found themselves confronted at mid-term with an opposition-controlled House of Representatives. In *Evil Results of Mid-Term Congressional Elections and a Suggested Remedy* (University of Southern California Press, pp. 78, $0.75), Pearl Olive Ponsford has surveyed the relations between these presidents and the congresses involved. The numerous instances of lack of coöperation, the author believes, demonstrate the need for improvement of a system which makes possible a two-year stalemate between the two policy-determining branches of government. The remedy proposed is a four-year term for representatives and senators, to run concurrently with that of the president. The solution offered seems to have been accepted somewhat uncritically. No consideration is given the numerous attempts to secure

an amendment embodying the reform suggested as to House members, and to the obstacles which arose to defeat them. Moreover, the study shows that none of the thirteen presidents involved achieved a popular vindication through reëlection—a fact which would seem to many, no doubt, to indicate the desirability of retaining some means by which a president whose legislative program has proved unpopular can be held in check for the remainder of his term. The study is to be commended for bringing together the pertinent historical facts bearing upon the problem. —Joseph E. Kallenbach.

In his study, *A Revolutionary Conservative*: *James Duane of New York* (Columbia University Press, pp. xviii, 283, $3.00), Edward P. Alexander, director of the New York State Historical Association, has presented the first full account of this prominent New Yorker of the Revolutionary period. James Duane was broadly typical of the shrewdly acquisitive but not unstatesmanlike class to which he belonged. He came out of a background of merchants and landed proprietors. He studied law, married into the prominent Livingston family, and began to acquire and speculate in land while practicing his profession. His family connections, his professional achievements, and his success in the accumulation of property established him as a man of influence in the community and made him a logical candidate for the responsibilities of statesmanship. He at first opposed action which would bring the disorders of revolution upon the colonies, but he continued as a leader after the break with the mother country became inevitable, taking conservative positions on matters having to do with the organization of the new governments. He was the leader of the New York delegation in the Continental Congress. After the war, he was mayor of New York City for five years. He was a member of the convention of his state which ratified the Constitution of the United States. He was the first United States district judge for the New York district. The man has a continuing importance for historians and political scientists because so many of his qualities, attitudes, and activities were characteristic of prominent men of his times. The biography is an eminently scholarly and thorough piece of work.—Carl Brent Swisher.

Dr. Frank Prescott's *County Finances in the South* (Arnold Foundation, Southern Methodist University, Vol. VI, No. 1, pp. 33), falls under three headings: (1) problems of state-county relationships, especially those which concern mandatory public services and the allocation of services and costs between the local units and the state to promote the maximum of economy and efficiency; (2) problems of financing the costs of government; and (3) the techniques of fiscal control to be exercised jointly by the state and the county. At the outset, the author calls attention to the

significant fact that expenditures of the 1,361 counties in the South amount almost to twenty per cent of all state and local government costs, as compared to the national average of 14.8 per cent of such costs. The demands on county governments for public services are constantly increasing in spite of their outmoded methods of management. To meet these demands, state subsidies are gradually increasing, and in some states, notably Kentucky, a large percentage of state income goes to the counties. Dr. Prescott also discusses the results of county consolidation in Tennessee and in Georgia. Political scientists will find the pamphlet of considerable value in the study of local government finance.—CULLEN B. GOSNELL.

The *Report of the Advisory Committee on Education* (Government Printing Office, pp. x., 228, $0.35) submitted to the President February 18, 1938, is a review of American public education, a summary twice summarized, concise, readable, and stimulating. The report is divided into a survey of existing conditions and a recommended program. The survey embraces an analysis and an argument. The recommended program, with summary, is divided into nine parts. The subjects reveal the extensive field of activity of the Committee: opportunity in the public schools, the education and adjustment of youth, educational services for adults, library service for rural areas, higher education and associated activities, vocational rehabilitation of the physically disabled, education in special federal jurisdictions, and educational research, planning, and leadership. Closing the report are tables clarifying the scope of the financial obligations. The book is a distinct contribution to the literature of government participation in public education. The factual data are well substantiated. The conclusion on page 35, lines 6 and 7, may be questioned. The report reveals the need for expansion of federal aid to general public education. It asks for a trial period of six years, and proposes the equalization of educational opportunity between and within the states. It suggests federal advice and federal funds, but not federal control. The goal is a uniform nation-wide program of educational achievement involving better training for jobs, better facilities for adequate instruction, better teaching, and better prospects for the future of America. Thus will our democracy be saved.—GEORGE C. ROBINSON.

The Administration of Unemployment Compensation Benefits in Wisconsin (Public Administrative Service, No. 58, pp. 92, $1.00), by Walter Matscheck and R. C. Atkinson, is a report of a "laboratory experiment" in problems of administrative procedure which soon must be solved by every state in the Union. Wisconsin began paying unemployment benefit claims eighteen months before any other state; consequently other states should

profit by the Wisconsin experience. An opportunity to do so has been made more easily available by reason of this study made by Matscheck and Atkinson under the auspices of the Social Science Research Council. The authors present a critical and detailed analysis of the organization and the processes involved in the administration of the Wisconsin unemployment insurance benefits during the fiscal year 1936–37. The exposition is supplemented by tables and graphs, and copies of forms used for reports of various kinds are given in the appendix. The conclusions which the authors draw from the Wisconsin experience should be of particular interest to unemployment insurance administrators, and also to students of public administration.—EDWIN O. STENE.

Proportional Representation—The Key to Democracy (National Home Library Foundation, pp. xiii, 177, $0.25), has been prepared by George H. Hallett, Jr., with the coöperation of Clarence G. Hoag, under the sponsorship of the National Municipal Leagus and the Citizens' Union of the City of New York. In the words of its authors, it is primarily intended for use in "educational campaigns both in communities that have adopted P.R. and in those considering its adoption." Issued in pocket size at a very low price, simply and clearly phrased, carefully organized, and emphasizing concrete political experience rather than theoretical discussion, the little book should serve a very useful purpose. At times it may seem that the authors unduly simplify, as for example, when they explain the superiority of the municipal government of Cincinnati over that of Kansas City as "due largely to a difference in election methods." The most valuable section as far as political scientists are concerned is the sixth, which presents a summary of experiences with proportional representation of the Hare type both in the United States and abroad.—HAROLD ZINK.

In a mimeographed pamphlet entitled *Bicameralism in Ohio* (Western Reserve Univ. Book Store, pp. 28, $0.25), Miss Thelma I. Griswold supplies a picture of the functioning of the Ohio legislature which might well have seen a more permanent form of publication. She succeeds admirably in giving factual information on the workings of committees and lobbyist activities; shows understanding of the relationships between the two houses; criticizes the duplication of functions and the delays that characterize the bicameral system; and illuminates to some degree the legislature's relations with the chief executive. Miss Griswold's commentary is safe and will institute no controversy; one can easily imagine it having been written by some of the public administrationists who expend their energies on the forms rather than the substance of government. She should be encouraged, in the future, to fire with more purpose the ammunition which she so capably collects.—GEORGE SMILL.

Financial Administration in the Michigan State Government (Chicago: Public Administration Service, pp. xi, 482) was prepared by Dr. Joseph Pois with the assistance of B. L. Gladieux, William Parsons, Lester Shephard, and Walter O. Harris. This study of Michigan finance was authorized by Governor Frank Murphy. It offers specific changes in procedure to be brought about by legislation and administrative action. The report restates the modern technique of public financial administration. Students and teachers of public administration, finance, and accounting will be vitally interested in this newest application of scientific business and accounting processes. Public officials and students of government will find in this survey technical competence which places Public Administration Service studies among the leading appraisals of their kind in the country. For a detailed description of purpose and content, the reader is referred to a companion volume for Kentucky commented on in this REVIEW in October, 1937, at p. 986.—EDWARD W. CARTER.

FOREIGN AND COMPARATIVE GOVERNMENT

In *The Organization of the English Customs System, 1696–1786* (D. Appleton-Century Co., pp. xii, 322, $4.00), Dr. Elizabeth E. Hoon presents the results of lengthy research on an important and little understood aspect of English government in the eighteenth century. The contemporary student of the history of institutions who begins to investigate an institution of secondary importance (such subjects as Parliament, the army, the cabinet, etc., having received almost too much attention) occasionally finds himself in a field of unusual richness. So with the present author, who gives us a survey of situations, both institutional and economic, of the utmost complexity. Perhaps half of Dr. Hoon's book deals with the administrative arrangements of the customs service—its manifold and conflicting functions, its control by a board of customs commissioners which was subject to the Lords of the Treasury, responsible to Parliament, and interrelated with the Board of Trade—and describes in detail the complex arrangements of the central customs office in London. Two chapters deal with the organization of the Port of London and other ports—both full of interesting information on other than administrative matters. A chapter on personnel makes us realize that a study of eighteenth-century institutions is pre-history to political scientists brought up on current ideas of a civil service. Two final chapters deal with customs procedures. The very mass and variety of detail which Dr. Hoon presents shows that the present book contains only part of her possible harvest from her field. The book has extreme richness of documentation, and its bibliography is a model. Since, however, this volume is the nineteenth of a series published under the auspices of the American Historical Association, one further thing should be said. Back in 1920, the Association ap-

pointed a committee on the writing of history which published a brief and brilliant report (under that title) in 1926. Many books have appeared under the auspices of the Association since that date. May a patient, and still hopeful, member of the Association suggest that the time has almost come when all candidates for publication under its auspices should be required to read *The Writing of History?*—E. P. CHASE.

The past year has witnessed a veritable barrage of new books and revisions of older ones designed for text and collateral reading purposes in courses in Hispanic American history. Among the latest are Mary Wilhelmine Williams' *People and Politics of Latin America* (new ed., Ginn and Co., pp. 889, $4.60) and Russell H. Fitzgibbon's *Visual Outline of Latin American History* (Longmans, Green and Co., pp. 203, $0.75). Little need be said of Miss Williams' new edition. Substantially, it is the same as its predecessor, except for a new color for the binding, the inclusion of fifty-odd attractive and well-selected illustrations, and the addition of some fifty pages covering the period since 1930. The colonial chapters, outstanding in the old, are unchanged in the new. The present reviewer frankly has never cared for the organization of the portion dealing with the national era, where each country is treated as a separate and unrelated unit. The pages added to the new volume do, however, include some valuable and very elusive factual material, particularly on recent international complications. Those who have in the past liked *People and Politics* will welcome the new edition; for there is no essential change. In his *Visual Outline*, Professor Fitzgibbon presents in outline form the history of Hispanic America down to 1938. In this he attempts something hitherto untried; and, while there are defects in the handling, the *Visual Outline* has positive and outstanding merits, both for syllabus and for review purposes. As a political scientist, Professor Fitzgibbon is inclined to over-emphasize recent developments, and the colonial period and the wars of independence are consequently given less than thirty-five per cent of the entire volume. In form, the national era follows the basic principle of organization by countries; nevertheless, further subdivisions are made which permit ready rearrangement so as to study the development period by period. Consequently, it is quite feasible for those who dislike the lack of detail, yet want the invaluable interpretation to be found in such texts as Chapman's *Republican Hispanic America*, to utilize this volume in connection with the other. Factually, the *Visual Outline* is basically accurate, but a number of minor errors occur, with "*Juan* José de San Martin" perhaps the most glaring. Four pages of bibliography and an extensive index complete the work. Unfortunately, the bibliography is for the whole of the *Outline*; no attempt has been made to give references for the several separate sections.—LEWIS W. BEALER.

Ronald C. Davison has made an important contribution to unemployment insurance literature in his *British Unemployment Policy Since 1930* (Longmans, Green and Co., pp. 136, $3.00). The study deals with the years 1930–37 and splices on to the discussion of the earlier period in Sir William Beveridge's *Unemployment; A Problem of Industry* (1930 ed.). The policy of "made work" for unemployment relief produced unsatisfactory results in Great Britain and was abandoned in 1931. The Unemployment Insurance Act of 1920, after being amended more than thirty times, was fundamentally reconstructed in the act of 1934 (cf. codification of 1920 act and 1934 act in 1935 act). Potential claimants for insurance or relief were now divided into three categories: (1) those with contractual unemployment insurance rights, who continued to be covered by the insurance act administered by the Ministry of Labor; (2) able-bodied unemployed who lacked contractual insurance rights and needed "assistance," whose claim was now against the National Unemployment Assistance Fund administered by the newly created Unemployment Assistance Board, and whom local public assistance authorities (poor relief) were specifically forbidden to assist; and (3) relief claimants whose need was due to other causes than unemployment, i.e., in most cases unemployables, and who are the responsibility of local relief authorities. Mr. Davison has disentangled and made clear to persons not expert in British legislation the essential features of the 1930–37 legislation and how it has worked. Americans interested in unemployment insurance and relief problems cannot fail to be instructed by the able analysis of British experience. And it can be read in an afternoon!—Don D. Lescohier.

In spite of the large amount of attention which has been given to the field of public administration, surprisingly little has been done to develop the theoretical aspects of the subject. *Committees in Organization* (London: Terminal House, pp. 48), by L. Urwick, is an important, even though small exception, to this generalization. Mr. Urwick analyzes the structural and psychological characteristics of committees, discusses their widespread use, and stresses their disadvantages. Perhaps the most important part of his analysis is concerned with the functions which committees may be called upon to perform. His general conclusion is that committees can effectively exercise only the elementary activity of control and the specific activities of determining jurisdiction and of coördination. Thus committees are inherently incapable of effective leadership or execution, and even for most other activities an individual is more effective. It is evident that Mr. Urwick has an impatience with the slowness of traditional democratic processes which is a common characteristic of administrators. Committees certainly hamper administration as much as they facilitate it, but one may wonder whether the principal function

of committees is indeed not just that—to prevent leaders from getting too far ahead of the mass. Although he mentions the matter, Mr. Urwick is not impressed with the possibilities of committees as agencies of group thinking which have been so ably developed by Wallas, Follett, Sheffield, and others—a function designed to create a policy rather than to administer it. No one can read Mr. Urwick's analysis without realizing the many inherent limitations of effective committee work. One might wish that this little book were required reading for every important officer in Washington, and for every college faculty.—RODNEY L. MOTT.

Professor J. H. Clapham has brought his monumental *Economic History of Modern Britain* to completion in a third volume, entitled *Machines and National Rivalries (1887–1914), with an Epilogue (1914–1929)* (Cambridge University Press, pp. xiv, 577, $7.00). This volume maintains the high excellence of the earlier parts of the work, and of the other writings of this noted economic historian. Professor Clapham's is a vital sort of writing that makes the unexperienced past seem almost as clear as the present-day world. Political scientists will be most interested in the last 150 pages of the text, which deal with the development of the economic activities of the state, the labor movement, and the economic conditions of Britain in the early post-war period. This is a field much traversed in the writings of contemporaries; but Professor Clapham's fresh account, with his emphasis upon the changing opinions of statesmen and public, is a pleasure to read and a valuable reinterpretation.—JOSEPH R. STARR.

INTERNATIONAL LAW AND RELATIONS

Except for personal comments and interpretations, chiefly of a laudatory nature, the approach of John I. Knudson's *A History of the League of Nations* (Atlanta, Ga.: Turner E. Smith and Co., pp. vi, 445) follows that of the many handbooks and pamphlets which have helped to acquaint the public with the League of Nations. Under headings which are commonly used, the principal events concerning the organization and work of the Geneva organization are presented in summary form. The book is in four parts, dealing, respectively, with international politics, international legislation, semi-League organizations, and appendices with a few documents. The logic of this arrangement is violated by the inclusion of several chapters unrelated to the division under which they are placed. For instance, a chapter on international administration is placed in Part I, which deals with international politics. Generally, the activities of the League are surveyed adequately under the various chapter headings. Some subjects, such as the mandate system and the revision of treaties under Article XIX, are given less attention than they deserve. The chapter on American coöperation with the League appears out of place in so short a treatment, except as an effort to stir American opinion.

The author has made frequent statements of opinion about the League, none of them new. He is enthusiastic about the Geneva organization and inclined to praise it or to offer an apology for its shortcomings. He believes in collective security, but considers that "greater emphasis should be placed upon the promotion of peace and less upon the prevention of war." Great confidence is displayed in public opinion as a sanction for international engagements and a regulator of national conduct. At many points the author criticizes American foreign policy, advocating greater coöperation by our government to strengthen the League and preserve peace. The volume is not based upon research into documents, nor does it disclose close personal contact with the League in operation. As a history, it does not describe the development of the unwritten constitution of the Geneva organization nor the forces, within and without, which transformed it from a Covenant into a center of diplomacy. The book should be judged chiefly as an effort to reach the public. The author ambitiously intended it for use "in academic circles, clubs, forums, and by general readers." To enhance interest, a few pictures of League meetings have been inserted. The presentation is non-technical, but it lacks the colorful allusions to personalities, incidents, and situations which the general reader requires. Very likely the volume will be useful to clubs and forums looking for a brief summary of the essential features of the League, simply presented and interpreted.—NORMAN L. HILL.

The Family of Nations; Its Needs and Its Problems (Charles Scribner's Sons, pp. xiii, 400, $3.00), by Nicholas Murray Butler, is a collection of addresses and essays written between January, 1934, and November, 1937. Although in such a volume of collected papers any carefully developed thesis and conclusion is necessarily lacking, it is possible to detect the basic philosophy which guides the president of the Carnegie Endowment for International Peace in his thinking on current international problems. Opposed to war because of both its futility and its destructiveness, convinced that war can be eliminated only in an organized world, and thoroughly aware that no nation can isolate itself from the responsibilities of peace and war, he finds the solution for the recurrent threat of war in institutional pledges of nations not to resort to war as an instrument of national policy. New treaties, however, are not necessary, but rather a positive insistence by public opinion that solemn international obligations be honorably observed. Simultaneously, governments must be compelled to avoid those policies of economic nationalism which have done so much to make the post-war peace machinery ineffective. Though this philosophy is not new, the state of world affairs today bears witness to the need for its reiteration and application. That it has been restated in different ways by Dr. Butler on thirty-one separate occasions during the

last four years is of special value because of the size and influence of the audiences reached. Bound in one volume, these statements conveniently illustrate the paradox to be found in our knowing how to preserve peace while we actually drift toward war.—WALTER H. C. LAVES.

Students of international politics will find excellent material for a case study in *La Question de l'Adriatique, 1914–1918* (Paris: Alfred Costes, Éditeur, pp. lxxxiv, 296), by Paul-Henri Michel. A contributor to the *Publications de la Société de l'Histoire de la Guerre*, the author has assembled nearly three hundred documentary items, arranged chronologically, covering an important phase of inter-Allied politics during the war viz., the struggle for the eastern Adriatic coast engaged in by Italy and Serbia. A scholarly sixty-page introduction precedes the main body of source material which has been drawn with discrimination from published diplomatic documents (chiefly Italian, Serbian, Bulgarian, and Russian—for which latter we have long been indebted to the Soviets!), parliamentary debates, contemporary pamphlets and newspapers, etc. Excerpts from important personal memoirs are, however, conspicuously lacking. Although the focus is naturally the diplomatic phase of the struggle, M. Michel has happily included materials illustrating the currents of unofficial opinion in the countries concerned and the activities of organized pressure groups, of which there were many. The result is a fascinating, if complicated, drama of contending forces maneuvering for advantage. The prize was the eastern littoral of the Adriatic—at the expense of the still-undefeated Austria-Hungary. On the one hand was Italy, backed by British and French statesmen, willing to promise much to gain (and retain) an ally; on the other was Serbia, supported as always by the Tsar and his ministers, as well as by Yugoslavian propagandist groups in Austria-Hungary and abroad. Discord among the Allies precipitated by this conflict even went so far that an Italian envoy could seek (in July, 1915) to dissuade Bulgaria from joining his government's and the Allied cause (p. 145) for the palpable reason that a successful war *against* Bulgaria might divert Serbian ambitions away from Dalmatia. Such cross-purposes during the war among those engaged in "a common cause" augured ill for harmony at Paris in 1919—and long after.—WILLIAM P. MADDOX.

As a contribution to the literature on the "A" Mandates, Philip W. Ireland's *Iraq; A Study in Political Development* (Macmillan Co., pp. 510, $3.75) is of primary importance. Access to a mass of unpublished official telegrams, dispatches, and memoranda, combined with a careful check of published material and personal investigation, has enabled the author to produce a clear, dispassionate yet critical, study of the back-

ground and formation of the mandate for Iraq. For the first time, British policy and administration in Mesopotamia during the War and the immediate post-war periods has been analyzed critically from the original documents. The study is almost wholly concerned with the period 1914 to 1922. Chapters on the British conquest of Mesopotamia and the resulting military administration are followed by three others on Arab nationalism, including the insurrection of 1920. The transition from the military government to the civil government and the eventual enthronement of Faisal is discussed in detail, not only from the point of view of internal developments but also with consideration of general British policy in the Middle East. The divergent attitudes and aims of the Foreign Office and the Government of India are shown clearly. The imprint of the beliefs and prejudices of important characters like Gertrude Bell, Sir Arnold Wilson, Sir Percy Cox, Saiyid Talib Pasha, the Naqib of Bagdad, and others, on the formulation of policy is apparent throughout the study. Because of his use of unpublished documents, the author is able to correct many statements made in earlier works. He is critical of British and Arabs alike, but willing to praise what he considers honest and worthwhile achievements. We have in this work a good case study of British colonial administration under adverse conditions. An excellent summary chapter brings the study down to the present, and concise footnotes, together with a well-annotated bibliography, complete a book that shows the results of careful research and sound scholarship.—WILLIAM C. JOHNSTONE.

While future acquisitions of title to *terra nullius* are not likely to be numerous, the international law of the past on that subject is not without current significance, since, as has been said, "occupations of the past often give rise to the boundary disputes of the present." Consequently, the volume by Arthur S. Keller, Oliver J. Lissitzyn, and Frederick J. Mann entitled *Creation of Rights of Sovereignty through Symbolic Acts, 1400–1800* (Columbia University Press, pp. vii, 182, $2.50), which at first blush may seem to be merely a piece of research for research's sake, may more properly be regarded as a useful contribution and one which may be of value to some future international tribunal confronted with conflicting claims of sovereignty based upon early "discoveries." The authors have ignored text-writers and have sought instead to discover the actual practice of the major maritime powers in acquiring title to *terra nullius* during the era of discovery, as that practice is revealed in journals and letters of explorers, records of chartered companies, diplomatic correspondence, and other official documents. As the result of what they regard as a sufficiently representative sampling of such material, the authors conclude *inter alia* that, while "discovery" in the sense of a

mere sighting of *terra nullius* or disembarkation upon it was not enough to give title, some formal symbolic act of taking possession, the degree of formality of which varied in practice, "was generally regarded as being wholly sufficient *per se* to establish immediately a right of sovereignty over, or a valid title to, areas so claimed and did not require to be supplemented by the performance of other acts, such as, for example, 'effective occupation' " (p. 148). A bibliography of works cited and an index complete this interesting little book.—VALENTINE JOBST III.

Three years ago, in a published study of Cuban-American relations, this reviewer wrote: "Authoritative and objective monographic studies are lacking on several important periods in the relations of Cuba and the United States since 1900. This is especially true of the second intervention . . . " That conclusion would now have to be fundamentally revised. The recent publication of David A. Lockmiller's *Magoon in Cuba; A History of the Second Intervention, 1906–1909* (University of North Carolina Press, pp. xiii, 252, $3.00) admirably—one might almost say definitively—supplies that particular lack. In his opening chapters, Dr. Lockmiller traces major developments during the periods of the first intervention, 1898–1902, and the Estrada Palma administration, 1902–06. In the following two chapters, he summarizes adequately the events of the revolution of August, 1906, the establishment of the provisional government by the United States, and the appointment of Charles Edward Magoon as governor. Three additional chapters deal topically with important aspects of the Magoon administration, perhaps the best of them being the excellent treatment of the work of the Advisory Law Commission. A succeeding chapter describes the restoration of the Cuban government, and the final chapter presents a well-rounded and temperate evaluation of the intervention. The ample bibliography (as is true also of the footnote references) shows an excellent use of the best Spanish and English materials. Presentation of the material in the volume is straightforward and unadorned. Biographers, unlike valets with their masters, all too frequently make heroes of their subjects, and as the reviewer read the book he began to wonder whether Dr. Lockmiller would find anything in Magoon's administration to criticize. The summarizing chapter does however, unerringly put a figurative finger on the weak points of the provisional government: the excessive granting of pardons and the temporizing policy. The study is a distinct contribution to the literature on the subject, and it should help greatly in establishing in his proper historical proportions the considerably maligned Governor Magoon.—RUSSELL H. FITZGIBBON.

Proponents of autarchy rarely argue that the total national income, irrespective of its distribution, can be increased by the establishment of

barriers to international trade. Indeed, Professor William E. Rappard, in his brief volume *Post-War Efforts for Freer Trade* (Geneva Research Center, pp. 67), brings out the striking unanimity of support for the opposite position. Time and again, delegates of world powers gathering around the conference table have reiterated their faith in the liberal economic philosophy of Cobden; and just as often they have separated after fruitless attempts to put their faith into practice. Searching for the reason for these failures, the author reviews the long series of efforts to reduce trade barriers made at Paris in 1919, at Brussels in 1920, at Genoa in 1922, at Geneva in 1923 and 1927, and at London in 1933, ending with the recent Van Zeeland mission. In each case, he finds agreement on the principle of collaboration—an agreement which is something more than a mere polite but platonic interest, and which takes the form of an earnest desire to promote international commerce. The problem, says Rappard, is more complex, because less exclusively economic, than it appeared to Cobden. A scientific study of international economic relations is not sufficient; the whole complex pattern of power politics is an inextricable component of the problem. The reader, of course, will not consider this an unusually revealing or unique conclusion, and may feel with the reviewer that more space should have been devoted to a consideration of means for piercing the seemingly impregnable circle of political and economic forces.—VERNON A. O'ROURKE.

In *Propaganda from China and Japan* (American Council, Institute of Pacific Relations, pp. xiv, 118, $1.50), Bruno Lasker and Agnes Roman have made a case study in propaganda analysis which should be widely read. The authors avoid use of the technical language which sometimes obscures the meaning of the propaganda analyst, so that the study can be read with interest and profit by the layman. In the words of Mr. Lockwood, who writes an informative foreword, they "have tried simply and vividly to picture the case as presented by the two parties, and to dissect the character of the appeals" (p. xii). In this they have succeeded. The basis of the study is the materials sent out from China and Japan during the first six months of the present undeclared war with a view to influencing the American attitude toward the struggle. In themselves, and as analyzed by the authors, these materials give the reader an indication of the views of each country (1) as to what the other is after, and (2) as to what each thinks that it is itself attempting to accomplish. Thus some of the materials consist of "Propaganda in Information—Given and Withheld," which is the heading of the second chapter. But, in addition to information as to the issues involved, the reader is shown clearly to what stimuli the Japanese and Chinese think Americans will respond. This study of "Propaganda to Affect Attitudes" (the title of the third

chapter), as it reveals the attitudes themselves, should interest even those readers who are not particularly concerned about the Far East. Finally, the authors seek to ascertain, from the propaganda, what China and Japan, respectively, would like the United States to do about their struggle.—HAROLD M. VINACKE.

The system of control certificates established by the British during the World War for United States cargoes destined to Germany's neutral neighbors is briefly described in *The "Navicert" System During the World War* (Washington; Carnegie Endowment for International Peace, pp. 83). The author, H. Ritchie, a former British foreign service officer, gives the administrative details of this part of the German blockade system, which permitted cargoes destined for these neutral states to receive the British *placet* before leaving the United States, and thus to avoid the otherwise compulsory visit and search in British ports. He outlines the coöperative measures taken by the governments and trade associations in the neutral states, indicating in the main their acquiescence in British demands. The difficulties of United States shippers with the system are described by Ethel C. Phillips in the October, 1933, issue of the *American Journal of International Law*. The last fifty pages of Mr. Ritchie's book consist of annexes. The first is a Command Paper (8145, Misc. 2, 1916) describing British measures for blockading Germany; this is followed by lists and texts of agreements with neutral governments and private associations accepting British restrictive measures; and last come successive British contraband lists, the final one containing over 250 items of unconditional contraband alone, an ominously complete one in a future conflict.—HAROLD J. TOBIN.

Dr. Albert E. Kane's *China, the Powers, and the Washington Conference* (Commercial Press, Shanghai, pp. vi, 233, $2.00, distributed by Brentano) covers the historical background of the Powers' involvement in China as well as the treaties signed at Washington in 1921–22. A legitimate criticism might be that the author has sought to compress too much of the record of foreign intervention in China since 1839 into the first chapter, which in consequence tends to become sketchy. For the student or lay reader who comes fresh to the subject, however, this volume supplies a setting to the conference which is extremely valuable. Its main chapters deal with the Four-Power and Nine-Power Treaties; issues affecting Shantung, Manchuria, and special foreign privileges in China, such as extraterritoriality and the conventional tariff, are, however, also treated. The author shares ex-Secretary Stimson's opinion that the Washington treaties were interdependent, so that violation of one brought all into question. He also feels that the phases of coöperative action by the

Powers with respect to China were, even if motivated by selfish aims, usually beneficial both to themselves and to China; periods of rivalry were disastrous, more especially to China. The book is extensively documented; while it does not blaze new fields, it provides a useful compilation of contemporary and background materials relating to China at the Washington Conference.—T. A. Bisson.

Additional proof that the United States is a member of the League of Nations in everything but name will be found in a recent study published by the Geneva Research Center under the title *The United States, League of Nations, and International Labour Organization During 1937* (pp. 72). This is the eighth annual report on the same subject, edited "by a group of Americans in Geneva," and outlining the scope of America's participation in the non-political, and even the political, activities of the League. Extensive as this coöperation has been, it has been even greater in the work of the International Labour Organization. "It would not be an exaggeration to say that the United States, though a newcomer in the Organization, is already one of its most influential members." The Introduction contains the usual paragraph lamenting the fact that the United States is not represented in the League Assembly and Council.—Vernon A. O'Rourke.

POLITICAL THEORY AND MISCELLANEOUS

The brief time given to work in political philosophy in the average undergraduate curriculum usually does not allow careful study of source material, but forces reliance on textbooks. These can never give that understanding which comes from a reading of the classics themselves. A revised and enlarged edition of Francis W. Coker's *Readings in Political Philosophy* (Macmillan Co., pp. xvi, 717, $4.00) is, therefore, welcome, since it contains adequate selections from some twenty-five thinkers from Plato to Bentham, and so constitutes a practicable approach to an unattainable ideal. The thinkers chosen are those whom scholars would agree to be of first-rate significance, while no major movement in the development of European political ideas goes unrepresented. The selections bring out the leading concepts of the various authors and reveal their style, method, and general thought processes. Professor Coker's introductions to the selections are wisely brief, simply telling in each case who the author was and what was his main theme. They thus aid understanding without being obtrusive. Teachers should be especially grateful for representative selections from medieval thinkers—above all, for the translation of part of Marsiglio's *Defensor Pacis*. The careful revision of inadequate or antiquated translations of such thinkers as Bodin and the uniform use of the best available editions of works is further to be

commended. As to defects, one may note the following: Plato is represented only by *The Republic,* and Machiavelli by *The Prince;* the liberal thought of eighteenth-century France is but partially covered by Montesquieu and Rousseau; while Paine and Bentham, without Burke, somewhat misrepresent English thought toward the end of the same era. Such omissions may be justified by considerations of space and of the difficulties of making selections at once typical and consecutive. Taken as a whole, the book is excellent and should prove of great value to the student.—THOMAS I. COOK.

In *Jean Jacques Burlamaqui* (University of North Carolina Press, pp. viii, 211, $2.50), Dr. Ray Forrest Harvey contends that far too little attention has hitherto been given to the man of whom he writes, especially by students of American political institutions, the most distinctive of which he finds foreshadowed in *Principes du droit naturel,* published in 1747. While Burlamaqui shared many of the theories of the contractualists and others, including Montesquieu, it was, according to Dr. Harvey, in departing from their teachings that he was led to embody in his own doctrine the most characteristic American traditions, notably the concept of the pursuit of happiness as one of the inalienable rights of man; the separation of the idea of state from that of government; and the concept of a government limited by a fundamental law distinct from the law of nature and expressed in the form of a written constitution. Through this constitution he conceived that both positive and negative limitations on government should be imposed: the positive to consist of specific grants of power, and the "separation of this delegated authority into the three rather generally accepted functions of government," the legislative, the executive, and the judicial, coördinate with each other; the negative to consist of definite restrictions and prohibitions on government. The germ of the American doctrine of judicial review, also, Dr. Harvey finds "implicit" in Burlamaqui. More important still, however, in the opinion of the author, was Burlamaqui's conception of man as a "political animal," and of the state, consequently, as natural rather than artificial; as well as his insistence that the "binding force of law" lies, not in its source, as contract, but, consistently with his idea of happiness as an inalienable right, in its content and purpose. Thus, according to Dr. Harvey, did Burlamaqui reintroduce into political thinking the concepts of Plato and Aristotle. Part II of the book is an attempt to show, with the presentation of much convincing evidence, the actual influence of Burlamaqui's ideas on the development of American constitutional theory and institutions. In reading this part of the study, one is led to wonder whether greater clarity, and therefore greater cogency, might not have been secured by somewhat more condensation and brevity. The

arrangement of material here, especially as superimposed upon the discussion of Part I, produces a somewhat repetitious effect. It is believed that this might have been avoided, and that at the same time various lesser obscurities and confusions might have been removed by one more working over of the material before publication. The book undoubtedly throws much light on the history of political thought, and makes a very real contribution to the understanding of the intellectual influences behind American constitutional government.—ELLEN DEBORAH ELLIS.

To the current literature on the controversial subject of socialism has lately been added *On the Economic Theory of Socialism* (University of Minnesota Press, pp. 143, $1.75), by Oscar Lange and Fred M. Taylor. The papers included present a technical defense of socialism on the grounds of economic theory and practice. Taylor's paper undertakes to demonstrate that the method of guiding production in a socialist state, by assuring a citizen a given money income and by authorizing him to spend the income as he chooses in buying commodities produced by the state, is theoretically sound and practically possible. Lange's more lengthy contribution deals with the same general problem, undertaking, however, to refute the contentions of Mises, Hayek, and Robbins, who have argued against the theoretical and practical possibility of securing a rational allocation of resources in a socialist economy. Lange undertakes to show that the problem of the allocation of resources in a socialist society is not fundamentally different from that in a competitive capitalistic society, and that in both instances the "trial and error" method indicates the proper allocation. While the two papers have previously been published in scientific journals, the reprinting of them in book form makes them more readily accessible. The explanatory introduction by Benjamin E. Lippincott, which sketches the main argument of the essays for the reader who is not a specialist in economics, is a welcome addition. —NATHAN SILVERSTEIN.

In his *History of Social Philosophy* (Prentice-Hall, pp. 581, $2.60), Charles A. Ellwood attempts to trace the development of speculation regarding "human relations, their origin and destiny," from the time of Plato to shortly after the beginning of the twentieth century. His point of view is avowedly that of "impartial social science," and his purpose is not only to expound but to "evaluate" the "great currents of social thought in our civilization." By "evaluate," Professor Ellwood means, it appears, "to pass judgment on the truth or falsity of what is essential in them . . . " One by one, he analyzes the great social philosophies of the past, weighs them in the balance, and finds them wanting because their basic assumptions are unacceptable for modern "scientific" sociol-

ogy. His book stands, therefore, in sharp contrast to such another recent work as Professor George Sabine's *History of Political Theory*, which avoids dismissal as a mere chronicle of the personal insights of its author by the simple expedient of recognizing, *ab initio*, that criticism "cannot either rule out or substantiate a postulate." Save for illuminating chapters on Turgot, Comte, Sumner, and Ward, the volume is to a surprising extent a restatement of materials usually included in histories of *political* philosophy; and the student will search the author's pages in vain for a clue to that distinction between social and political philosophy which enables him to go so far with the historians of the latter, and yet omit from his account such thinkers as—to cite a few conspicuous examples—Wycliffe, Marsiglio, Occam, Gerson, the Monarchomachs, and Engels. That the book belongs to an entirely different realm of discourse from Professor Sabine's may perhaps be inferred from Professor Ellwood's frequent appeals to Mr. Will Durant's highly successful *Story of Philosophy*.—WILLMOORE KENDALL.

In *Essays in Jurisprudence and Legal Philosophy* (Soochow University Law School, Shanghai, no date, $3.00), John C. H. Wu and M. C. Liang have brought together a choice collection of essays exemplifying the legal thought of the modern world. The compilers have drawn from legal writers of the United States and Europe, while Dr. Wu has contributed several essays from his own writings. For the general reader, interested in knowing more about the theory of law as set forth by its practitioners, the volume is an interesting and convenient handbook. It does not pretend to be complete or comprehensive, but it is representative. The work is divided into five books, with from three to nine essays in each. The books are headed as follows: "Meaning of Law and an Analysis of Legal Concepts"; "The End of Law"; "Relations Between Law and Other Mental and Social Disciplines"; "The Nature of Judicial Process"; and "The Problem of Natural Law." Each book is thus complete in itself in respect to some problem of law, while the essays are so chosen and arranged that one leads to the next, until the reader has thumbed and read through the volume. Separate paging for each essay reduces the convenience of the work to some extent.—ANDREW E. NUQUIST.

In *Our Generation; Its Gains and Losses* (University of Chicago Press, pp. viii, 116, $1.50), the inaugural course of lectures delivered at Westminster College, Fulton, Missouri, under the John Findley Green Foundation, Oscar Douglas Skelton, historian, economist, biographer of Laurier, and since 1925 under-secretary of state for external affairs of Canada, takes stock of the tendencies affecting international relations and of their results, of changes in political organization, and of economic and educa-

tional trends since the beginning of the century. Laymen will be grateful for this quintessential report of these dramatic decades; professional students of the social process, familiar with the substance, will nevertheless appreciate this expert summary; both will enjoy the crisp, clear, aphoristic style and the absence of terminological abracadabra. Furthermore, both will welcome the author's conviction that the generation to come "will maintain and justify democracy." To his lectures Dr. Skelton brought scholarly perspective and mature cosmopolitan judgment. In them will be found much wisdom, and therefore few prophecies.—HENRY REIFF.

An ex-civil servant and a prolific writer on philosophical questions, Allen Vannerus, has published, in *Den Bästa Staten* (Stockholm: Bonniers, pp. 240), various papers on such topics as Gierke, Jellinek, Kelsen, democracy, parliamentarism, and dictatorship. They are of interest primarily because they expose the bureaucratic mind in its reaction to political theories. Vannerus is not typical in the sense that his kind of person is frequently encountered in the higher public service of Sweden, but he is representative of a type of thinking. What does the bureaucrat hold to be the "best state"? One that provides a government which is authoritative and competent. Such a state is possible under a monarchy, but the essential feature of the representative law-making body is that it should know its state and its conditions. There should be no constitutional hindrances to dictatorship in emergencies, but there should always be limits to the power of the rulers. The ideal of state organization is "well-balanced moderation." These are principles which Vannerus holds to be valid for his own country. Sweden is still in the transitional stage, because there are many there who share this view of life with its so far unplumbed implications.—ROY V. PEEL.

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY GLENN B. McCLELLAND

University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

Gabriel Almond; Ph. B., Chicago, 1932. Political Participation in New York City. *Chicago.*

Sigmund S. Arm; B.S.S., College of the City of New York, 1932; A.M., Columbia, 1935. Influence of Locke and Montesquieu on the Early State Constitutions. *Columbia.*

Charles C. Barrell; A.B., Hampden-Sydney, 1931; A.M., Virginia, 1932. Functional Representation—Its Theoretical and Practical Problems. *Ohio State.*

Walter Hartwell Bennett; A.B., Richmond, 1930; A.M., Duke, 1935. American Concepts of Federalism. *Duke.*

Donald G. Bishop; A.B., Akron, 1928; A.M., Princeton, 1929. A Suggested Psychological Approach to the Problem of Peace. *Ohio State.*

Dorothy Borg; A.M., Columbia, 1931. Outbreak of the World War; A Comparison of the Facts with the Newspaper Stories of the Outbreak of the War—1914. *Columbia.*

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Emmet E. Dorsey; A.B., Oberlin, 1927; A.M., Columbia, 1932. A Comparative Study of Negro Leaders. *Columbia.*

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[1] Similar lists have been printed in the REVIEW as follows; V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 772 (1937).

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MICHIGAN

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NEW YORK

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Constitutional convention. In addition to the twelve volumes published by the constitutional convention committee, listed in the preceding issue of the REVIEW (a full set sells for $25.00), the Convention has published, in the form of bills, all the proposed constitutional amendments, numbering several hundred. Whether these will later be compiled and published in book form is not yet known. The Convention is also publishing a "Record," which gives the text of proceedings, including all debates. In view of the growing tendency of courts to con-

sider intent in construing statutes, the record is most important. The Record for the first twenty-two sessions (up to May 26, 1938, inclusive) has already been published as a cumulated pamphlet of 293 pages; the issues for subsequent meetings are coming out separately, one for each session.

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Edward S. Corwin
William F. Willoughby
Isidor Loeb
Walter J. Shepard*
Francis W. Coker
Arthur N. Holcombe
Thomas Reed Powell

* Deceased